



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
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**A LAW TO IMPLEMENT THE INTERNATIONAL
CONVENTION FOR THE CONTROL AND
MANAGEMENT OF SHIPS' S BALLAST WATER
AND SEDIMENTS, 2004**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Humanities
(M.Hum.) in International Maritime Legislation at the IMO
International Maritime Law Institute**

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Academic Year 2019-2020

List of Abbreviations

BWM Convention	International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004
BWM Plan	Ballast Water Management Plan
BWM System	Ballast Water Management System
CFU	Colony Forming Unit
CLC 92	1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969
DOE	Department of Environment of Iran
FSU	Floating Storage Unit
FSPO	Floating Storage, Production, Offloading Unit
GloBallast	Global Ballast Water Management Program
IAS	Invasive Alien Species
ICJ	International Court of Justice
IMF	International Monetary Fund
IMO	International Maritime Organization
IMSAS	IMO Member State Audit Scheme
IOPP Certificate	International Oil Pollution Prevention Certificate
Iran	Islamic Republic of Iran
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978

MEPC	Marine Environment Protection Committee
MoU	Memorandum of Understanding
NC	Non Conformities
PMO	Ports and Maritime Organization
PSC	Port State Control
RO	Recognized Organizations
ROPME	Regional Organization for the Protection of the Marine Environment
SDR	Sustainable Development Goals
SDR	Special Drawing Right
UNCED	United Nation Conference on Environment and Development
UNCLOS	United Nation Convention on the Law of the Sea, 1982
VCLT	Vienna Convention on the Law of the Treaties, 1969
VIMSAS	Voluntary IMO Member State Audit Scheme

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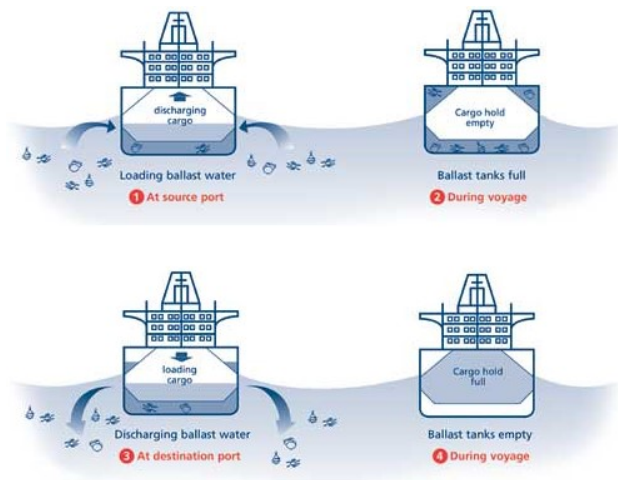
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INTRODUCTION

Ships, when not fully loaded, may require the loading of a certain amount of seawater into their designed ballast tanks to maintain their stability, and the ability to navigate through perils of the sea. The loaded seawater is called ballast water, and the operations are called ballasting and de-ballasting.

Regardless of how innocent it may look, ballast water, even though containing no apparent pollution, may pose a real danger to the environment when discharged. Indeed, local aquatic species of one ecosystem, when transferred in a ship's ballast water, can act as Invasive Alien Species (IAS) in another ecosystem. This type of pollution may have, in many cases, a much more devastating effect on the marine ecosystem than an oil pollution.

For some marine pollutions, such as oil pollution incidents, the conventional response methods are applicable. In stark contrast, for a biological pollution, in majority of cases, it is practically impossible to fully rehabilitate the ecosystem. Graph No.1 illustrates the transfer of IAS through the process of ballast water intake and discharge.



Graph No.1: sequence of the transfer of IAS when ballasting and de-ballasting.¹

¹ IMO, 'Ballast Water Management - the Control of Harmful Invasive Species' <www.imo.org/en/MediaCentre/HotTopics/BWM/Pages/default.aspx> accessed 5 January 2020.

In response to this environmental threat, the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004² (BWM Convention) was adopted by the International Maritime Organization (IMO) in 2004, and the Islamic Republic of Iran (Iran) became a party by acceding to it on 06 April 2011.³ The BWM Convention came into force by 8 September 2017.⁴

Hence, Iran, as a party to the BWM Convention, has the right and duty to enforce and implement the Convention's regulations on all ships within its jurisdiction. However, effective implementation requires a systematic approach, both legally and technically. This explanatory note addresses the necessity for implementation and enforcement through a clear and effective legislation; further, provides the draft of the "Law to Implement the International Convention for the Control and Management of Ships' s Ballast Water and Sediments, 2004."

The first part of the explanatory note, acts as an introduction to the BWM Convention. The second part explains the reasons why Iran should enact a legislation for the implementation of the Convention, and the third part deals with the approach required in the legislation to ensure the full protection of marine environment from IAS. Finally, part four provides the draft of a law implementin the main obligations under the articles of the Convention to be enacted by the Parliament of Iran and implemented by the government. It also provides an executive regulation covering the obligations and provisions in the Annex to be approved by the Ministerial Board.

² International Convention for the Control and Management of Ships' Ballast Water and Sediments (adopted 13 February 2004, entered into force 8 September 2017) IMO Doc. BWM/CONF/36 (BWM Convention).

³ PMO, 'Status of Iran in relation to IMO Conventions' (10 November 2015) <www.pmo.ir/psoc_content/media/law/635830901860294723.pdf> accessed 17 January 2020.

⁴ IMO, 'Ballast Water Management' <www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/Default.aspx> accessed 4 January 2020.

CHAPTER 1: WHAT IS THE BALLAST WATER MANAGEMENT CONVENTION

1-1- Background

The need for an international instrument to tackle the transfer of IAS was addressed in the United Nations Conference on Environment and Development (UNCED). In the report of the Conference, the request was made to the States to act within the framework of the IMO to address the need for ‘Considering the adoption of appropriate rules on ballast water discharge to prevent the spread of non-indigenous organisms.’⁵ Principle 15 of the Rio Declaration on Environment and Development, 1992⁶ (Rio Declaration) also refers to the “precautionary approach” and States as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Furthermore, the international legal obligation under the United Nations Convention on the Law of the Sea 1982⁷ (UNCLOS) to prevent the spread of IAS was among the legal basis for the BWM Convention. Article 196 states as follows:

States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

⁵ UNCED, ‘Report of the United Nations Conference on Environment and development’ (Rio de Janeiro, 3-14 June 1992) UN Doc. A/CONF.151/26 (Vol. II), 10.

⁶ Rio Declaration on Environment and Development, 1992 (adopted 14 June 1992 UN Doc. A/CONF.151/26 (vol. I)) (UNCED) (Rio Declaration).

⁷ United Nation Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS 1982) art 196.

Additionally, the Convention on Biological Diversity⁸ (CBD 1992), in article 8 (h) requires from States to ‘Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.’

As a response, the IMO Marine Environment Protection Committee (MEPC), which includes representatives from all Member States of the Organization, in 1994, established a “Ballast Water Working Group”, which initially was engaged to produce guidelines to assist States in preventing the introduction of IAS from ballast water into their marine ecosystems. In 1999, the preparation of the first draft of the Convention started,⁹ and in 2004, the BWM Convention was adopted by the IMO Member States in an international conference. It did not enter into force until the satisfaction of Article 18 of the Conventions on 8 September 2017,¹⁰ i.e. 12 months after the ratification by a minimum of 30 States representing 35% of world shipping tonnage.¹¹

1-2- Reasons for the Adoption and Implementaion of the Convention

Transfer of IAS has multidimensional adverse effects directly and indirectly on the environment and ecosystem, human health, welfare, economy, social and cultural aspects of coastal communities, and tourism.

1-2-1- Environmental Impacts and Changes to the Ecosystem

Ships carry huge amount of ballast water, enabling them to proceed in safe and stable condition when they are not fully loaded. The introduction of IAS may have a devastating effect in degrading marine environment as follows:

- IAS may, in competing with native species (for food and space), cause extinction of other species or a food chain of related species;

⁸ Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD 1992).

⁹ MEPC, ‘Report of The Marine Environment Protection Committee on its Forty-Third Session’ (43rd session 28 June to 2 July 1999) IMO Docs. MEPC 43/21.

¹⁰ IMO (n 4).

¹¹ BWM Convention (n 2).

- IAS may destabilize the population or ecological chain by preying on native species;
- Depending on the magnitude of effect, they may alter the habitat;
- Environmental conditions such as visibility may change. this can have a serious effect on coral reefs and lead to the bleaching;
- Food chain (web) and overall ecosystem may change;
- Displacing and leading a significant reduction in population or total extinction of local species.¹²

As an example, the “Mediterranean mussel” (*Mytilus galloprovincialis*) now is introduced globally and in many areas, such as South Africa, displaced other species; it out-competed a relatively close species in the US by hybridization. Also, in South East Asia and Africa, “water hyacinth” caused a severe reduction in oxygen level of the water, and consequently lowered the fish stock in the area.¹³

1-2-2-Impacts on Human Health

Coastal communities also depend on seawater for drinking water, and changes in the marine ecosystem can lead to desalination system failure. It may also cause the spread of disease or parasites. In brief, the following negative impacts may be accompanied by transfer of IAS or as a result of such transfer:

- Freshwater supply disruption;
- Poisoning of freshwater; and
- Spreading of diseases, such as cholera epidemics.

¹² GloBallast, ‘The Invasive Aquatic Species’ <<http://archive.iwlearn.net/globallast.imo.org/the-invasive-aquatic-species-2/index.html>> accessed 5 January 2020.

¹³ J Tamelunder and others, ‘Guideline for Development of National Ballast Management Strategy’ (IUCN, 2010) <<https://portals.iucn.org/library/sites/library/files/documents/2010-003.pdf>> accessed 10 January 2020, 3.

As an example, in connection with transfer of IAS, 30 persons died and about 500 hospitalized in Mexico due to water poisoning; also, in 1991, there was an outbreak of cholera epidemic in Peru.¹⁴

1-2-3-Economic Impacts

Transfer of IAS in changing the ecosystem and also in degrading the viability of the marine environment, can have drastic impacts on the economy, particularly on the economy of coastal communities. It may also affect bigger industry sectors such as the tourism. Global Ballast Water Management Program (GloBallast) lists potential economic impacts as follows:

- Reduction or total collapse of fish stocks because of competition or predation of new species, by displacing local species or due to degradation and damage to their habitat;
- Endangering fish farms to closure, particularly because of algae blooming (e.g., red tide in Bandar-abas and Chabahar¹⁵);
- Physical damage to coastal infrastructure, and facilities such as portable jetties, fishing vessels, coastal patrol boats, floating jetties, and oil pollution response barges;
- Increase of fouling which in turn can increase the shipping cost; particularly the effects would be tangible on Feeders. The increase in feeders' (cabotage) maintenance cost would lead to an increase in internal transportation costs. It will also extend to fuel efficiency, resulting in more coastal air pollution. Adverse effects on tourism, which may in extreme cases, result in the beach closure. Good examples would be fouling in the beach's infrastructure, bad odor due to algal blooming, and in extreme cases because of poisonous

¹⁴ *ibid.*

¹⁵ See also section 2-4.

species which may spread as forms of blooming. This extreme example has happened on 15 June 2018¹⁶;

- Secondary economy impact due to endangering human health, i.e. as forms of treatment cost, decrease in social productivity because of illness or unfortunate death;
- Other costs, including response and combating costs, research and development cost, and education costs.¹⁷

As an example, the transfer of green crab (*Carcinus maenas*) from USA to Europe is believed that resulted in partial reduction of soft-shell clam fisheries which led to an 85 percent catch reduction during two decades.¹⁸

1-3- Rights and Obligations under the BWM Convention

Article 2 of the BWM Convention requires the full and effective implementation of the main provisions as well as the Annex of the Convention. States are to ‘[P]revent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens’ through ship’s ballast water management and control.¹⁹ Articles 2 and 4 generally impose obligations on States to make sure that IAS are not being transferred via ballast water from ships flying their flag by implementing and enforcing the requirements; it also obliges the State Parties to have a proper national policy, strategies and programs in place to implement, and enforce the BWM Convention within their ports and coastal jurisdictions. At the same time, these articles enable the port and coastal States to enforce such regulations on any ship (falling under the scope of the Convention) within its jurisdiction. So while the State, being a flag State, shall make sure that the vessels flying its flag comply with the BWM Convention requirements, It also enjoys the right to apply the same regulations to vessels visiting its ports.

¹⁶ See also section 2-4.

¹⁷ GloBallast (n 12).

¹⁸ J Tamelander and others (n 13).

¹⁹ BWM Convention (n 2) art 2.

States are encouraged to co-operate with other States and to participate in further developments of related standards.²⁰ They should also by an adequate implementation system ensure that ships flying their flag fully comply with the Convention's provisions, and related IMO instruments.²¹ The BWM Convention requires from the State Parties to endeavor toward mitigating the risk of transfer of IAS to sensitive, vulnerable, or threatened marine ecosystems beyond their national jurisdiction.²²

1-3-1- Obligation to Establish Sediment and Ballast Water Reception Facilities

According to article 5,²³ States Parties shall ensure that where repair and cleaning of ballast water tanks are required, an adequate sediment reception facility is provided. States implementing the IMO's guidelines²⁴ on sediment reception facilities shall ensure that such facilities do not impair or damage the environment, human health, property, or resources and would not cause undue delay in the operation of the ships. It is also mentioned that States, while providing reception facilities, shall have due regard to the same interest of other States, including neighboring and other States that may be affected by such facilities.²⁵

It should be noted that provisions and standards prescribed by the BWM Convention do not apply to ships that discharge their ballast water to a reception facility,²⁶ provided that such reception facility complies with IMO guidelines on this matter.²⁷

1-3-2- General Obligations for Ships

All ships which fall within the BWM Convention scope of application are required to:

- 1- Have an approved Ballast Water Management Plan (BWM Plan) onboard;²⁸

²⁰ *ibid.*

²¹ *ibid.* art 2(8).

²² *ibid.* art 2(9).

²³ *ibid.* art 5.

²⁴ MEPC (55th session) Resolution MEPC.152(55): Guidelines for Sediment Reception Facilities (G1) (London 13 October 2006).

²⁵ BWM Convention (n 2) art 4, 10.

²⁶ BWM Convention (n 2) reg B-3(6).

²⁷ MEPC (55th session) Resolution MEPC.153(55): Guidelines for Ballast Water Reception Facilities (G5) (London 13 October 2006).

- 2- Have a ballast water record book on-board and keep a proper log of ballast water operations in the record book;²⁹
- 3- Apply the ballast water and sediment management plan accordingly at all times,³⁰ and depending on the year of build follow one of the following standards:
 - a. D1- ballast water exchange standard; or
 - b. D2- ballast water performance standard.³¹

Generally, the D-1 standard prescribes the exchange of ballast water to be conducted (in deep-sea and far from the coast) before entering the loading port (port of destination). This standard may apply only to ships that were built before the enforcement of the BWM Convention. After the requirement for the enforcement of the D-2 standard is met,³² ships to which the BWM Convention apply, shall comply with the D-2 standard.

The D-2 standard is the ballast water performance standard, which in general, requires ships to have a Ballast Water Management System (BWM System). These BWM Systems, are approved systems or methods that ensure that IAS will not be transferred upon the discharge of the ballast water. They may use, *inter alia*, physical filtration, active substances additives and ultraviolet light and other radiation methods; or a combination of two or more methods of treatment. The detail provisions of D1 and D2 standards are provided in part 1-10-4 (Standards for ballast water management).

1-3-3- Obligation to Carry Out Survey and Certification

Under Article 7 of the BWM Convention,³³ States shall ensure that all ships within the scope of the Convention are surveyed, and certified under the regulations provided in the Annex. This Article has two different features.

²⁸ BWM Convention (n 2) reg B-1.

²⁹ *ibid.* reg B-2.

³⁰ *ibid.* reg B-3.

³¹ *ibid.* reg D.

³² This date may vary depending on the date of last renewal of the certificate of the ship. See *ibid.* reg B.

³³ *ibid.* reg A-7.

On the one hand, it imposes the obligation of the survey and certification to the State Parties (Flag States). On the other hand, it relieves the ships which have certification under this article from further inspections by the other State Parties. Hence, it provides a mutual benefit; States, while implement international environmental law, and respect the sovereignty of other States, also facilitate trade by preventing unjustified surveys.

Nevertheless, ships that are adequately surveyed and carrying all the necessary certificates and documentation may still be subject to Port State Control's (PSC) detailed inspection in case of any clear ground that the ship or its equipment is not compliant with the Convention.³⁴

1-4- Scope of Application

Generally, the BWM Convention applies to all ships.³⁵ According to Article 1(1), it also includes floating platforms, Floating Storage Unit (FSU) and Floating Production, storage and Offloading units (FPSO).³⁶ However, the following vessels are exempted, and generally do not fall under the scope of this Convention:

- A- Ships not designed or constructed to carry ballast water;
- B- Ships of a Party which only operate in waters under the jurisdiction of that Party;
- C- Ships of a Party which only operate in waters under the jurisdiction of another Party, subject to the authorization of the latter Party for such exclusion;
- D- Ships which only operate in waters under the jurisdiction of one Party and on the high seas, except for ships not granted an authorization pursuant to subparagraph (c);
- E- Any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service; and

³⁴ MEPC (67th session) Resolution MEPC.252(67): Guidelines for Port State Control under the BWM Convention (London 17 October 2014).

³⁵ BWM Convention (n 2) reg A-3.

³⁶ *ibid.* reg A-1(1).

F- Permanent ballast water in sealed tanks on ships, that is not subject to discharge.³⁷

It shall be noted that according to the principle of “no more favorable treatment”,³⁸ the Convention will be applicable even to ships flying the flag of a State which is not a Party to the Convention but voluntarily found in the jurisdiction of a State Party. This well-established principle is widely accepted within the different international conventions, and is applied by PSC officers of the State Parties.

According to the regulation E-1 of the Convention, only ships with 400 GT and above are subject to requirements related to survey and certification. This exclusion does not cover the floating platforms, FSUs, and FPSOs.³⁹

1-5- Scientific and Technical Research and Monitoring

The BWM Convention, regarding scientific and technical aspects of implementing ballast water management systems, requires States to endeavor to:

- Promote and facilitate scientific and technical research; and
- Monitor the effects of management systems in areas within their territory.⁴⁰

The Convention also obliges States to promote the availability of relevant information to other Parties, upon their request, in order to further promote the objectives of the Convention in the preservation of the marine environment.

1-6- Violations and Consequences

According to Article 8 of the Convention,⁴¹ States shall in their national legal system prohibit any violation of the BWM Convention requirements, not only by the ships flying their flag, but also by ships within their jurisdiction, and establish adequate sanctions if such violations occur. These prohibitions and sanctions shall apply irrespective of the

³⁷ *ibid.* art 3(2).

³⁸ *ibid.* art 3(3).

³⁹ *ibid.* reg E-1.

⁴⁰ *ibid.* art 6.

⁴¹ *ibid.* art 8.

place where the violation may occur, and if they receive such alleged violation reports of ships flying their flag from the other State parties, they shall investigate as soon as possible; they shall take proper remedial action, and duly report to the requesting State. Moreover, States can start proceedings under their domestic law against the ship in violation of this Convention within their jurisdiction.

1-7- Port State Inspection

All ships within the scope of the Convention may be subject to inspection by PSC officers or any officers duly tasked with such responsibility. These inspections are primarily limited to:

- Required certificates (presence of valid certificates suffices);
- Ballast water record book, and/or
- Sampling the ballast water, considering the obligation not to cause any undue delay.

PSC officers or any officers duly tasked with such responsibility, according to PSC procedure, and Article 9 of the Convention, in case of existence of a valid concern or a clear ground, may carry out a detailed inspection. However, under Article 12, efforts shall be made to avoid any undue delay. In case of any undue detention or delay by the officer in charge, or PSC officer, the ship shall be entitled to compensation for any loss or damage suffered.

1-8- Technical Assistance, Cooperation, and Regional Cooperation

State Parties under Article 13⁴² of the BWM Convention undertake to provide any necessary support to requesting parties in respect of control and management of ballast water, directly or through IMO or other international bodies with training, availability of technology, equipment and facilities, joint research and development programs and any

⁴² *ibid.* art 13.

other action in line with effective implementation of the BWM Convention and related IMO guidelines.

Parties are encouraged to establish regional cooperation with the States in which they have mutual environmental concerns, such as enclosed or semi-closed areas to harmonize the co-operation, and optimize the efforts.

1-9- Amendment to the Convention, BWM Code and the Annex

The BWM Convention, like many other IMO Conventions, provides for both the classic (explicit) amendment method, and tacit acceptance procedure. Under the tacit acceptance procedure which applies to the Annex, and the Appendixes, any objections to the amendments shall be submitted within 12 months. Additionally, any amendments to the Annex and BWM System Code shall enter into force in accordance with Article 19 of the Convention.⁴³

1-10- Regulations for the Control and Management of Ship's Ballast Water and Sediments

As stated in article 2(2), '[T]he annex forms an integral part' of the Convention and States undertake to fully, and effectively comply with the provisions of the Convention as well as the Annex.⁴⁴ The Annex which is the 'Regulations for the control and management of ship's Ballast Water and sediments' is divided into five sections, as follows:

- Section A: General provisions;
- Section B: Management and control requirements for ships;
- Section C: Special requirements in certain areas;
- Section D: Standards for ballast water management; and

⁴³ *ibid.* reg D-5, A-1(8).

⁴⁴ *ibid.* art 2.

- Section E: Survey and certification requirements for ballast water management.

1-10-1- General Provisions

Regulation A-1 provides definitions of terms used in the Annex.⁴⁵ Regulation A-2 (General Applicability) states that ships shall discharge ballast water only through ballast water management in compliance with the Annex regulations unless otherwise provided.⁴⁶ The following exceptions are provided in regulation A-3:

1. The uptake or discharge of ballast water and sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or
2. The accidental discharge or ingress of ballast water and sediments resulting from damage to a ship or its equipment:
 - provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
 - unless the owner, company or officer in charge wilfully or recklessly caused damage; or
3. The uptake and discharge of ballast water and sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or
4. The uptake and subsequent discharge on the high seas of the same ballast water and sediments; or
5. The discharge of ballast water and sediments from a ship at the same location where the whole of that ballast water and those sediments

⁴⁵ *ibid.* reg A-1.

⁴⁶ *ibid.* reg A-2.

originated and provided that no mixing with unmanaged ballast water and sediments from other areas has occurred. If mixing has occurred, the ballast water taken from other areas is subject to ballast water management in accordance with this Annex.⁴⁷

On the other hand, regulation A-4 enables States, under certain circumstances, to grant exemptions to ships that operate between specified ports or locations only.⁴⁸ To grant such exemptions, there are some risk assessment principles, methods and procedures to be followed which are provided by the IMO in ‘Guidelines for Risk Assessment under Regulation A-4 of the BWM Convention (G7).’⁴⁹

Furthermore, a flag State, under certain circumstances, can issue an “equivalent compliance” to pleasure crafts.⁵⁰ However, the administration shall take the ‘Guidelines for Ballast Water Management Equivalent Compliance (G3),’⁵¹ into consideration.

1-10-2- Management and Control Requirements for Ships

Under regulation B-1⁵², ships are required to ‘have onboard and implement’ a BWM Plan. This plan should be approved by the administration and shall be specific to the particular ship. The plan should give detailed instructions of the actions required for the implementation of ballast water management requirements for a specific ship (which carries it) and it shall at least provide the followings:

- Detailed safety procedures for the ship and the crew related to ballast water operations as required by the Convention;
- A detailed description of the actions to be taken to implement BWM requirements and supplementary practices as set out by the Convention;

⁴⁷ *ibid.* reg A-3.

⁴⁸ *ibid.* reg A-4.

⁴⁹ MEPC (56th session) Resolution MEPC.162(56): Guidelines for Risk Assessment under Regulation A-4 of the BWM Convention (G7) (London 13 July 2007).

⁵⁰ BWM Convention (n 2) reg A-5.

⁵¹ MEPC (53rd session) Resolution MEPC.123(53): Guidelines for Ballast Water Management Equivalent Compliance (G3) (London 22 July 2005).

⁵² BWM Convention (n 2) reg B-1.

- Detailed procedure for disposal of sediments at sea and on shore;
- Coordinating procedures with authorities of other States if discharge within their State would take place;
- Designation of an officer on-board to ensure proper implementation of the plan;
- Reporting system according to the requirements.
- Be in the working language of the ship, and if the working language is not English, French or Spanish, the plan shall be translated into one of these languages.

Furthermore, under regulation B-2, every ship shall have on-board and keep a ballast water record book; the records shall be kept on-board at least for a minimum of two years and after that shall be archived for at least three years in the company (i.e., owner, manager or bareboat charterer). This record book shall contain at least the information provided in Appendix II of the Convention. The ship shall, without delay record all its ballast water-related operations into the record book, signed by the designated officer. It shall be readily available for inspection.⁵³

Regulation B-3 (Ballast Water Management for Ships), details of the inclusion of D1 or D2 standards for ships with the different years of construction, size and applicability of D2 standard (as to the only standard) according to the renewal survey.⁵⁴

For an existing ship, until and unless the B-3 regulation is not fully applicable, ships may apply D1 standard, which is a simple ballast water exchange.⁵⁵ Ballast water exchange in line with D1 standard shall be conducted at least 200 nautical miles from the nearest coast where the depth of water is at least 200 m. Where the ship is unable to exchange within the conditions mentioned above, it shall exchange as far as possible but not less than 50 nautical miles away from the nearest coast with at least 200 m depth. However, in areas where ships are not able to meet these minimum distance and depth criteria, port

⁵³ *ibid.* reg B-2.

⁵⁴ *ibid.* reg B-3.

⁵⁵ D1 and D2 standards are described in the section1-10-4.

State in consultation with affected States may designate areas for such exchange, and in doing so the State shall consider IMO's guidelines on the matter.

In cases where the exchange may impose threats to safety, stability, crew or passengers, the ship is not required to comply with the D-1 regulation.

- According to regulation B-3, as illustrated in graph No.2, existing ships whose International Oil Pollution Prevention Certificate (IOPP Certificate) was renewed between 8 September 2017 and 8 September 2019, if its previous renewal survey was between 8 September 2014 to 8 September 2017, shall comply with the D-2 standard with this renewal certificate (which falls after 2019 but before 2024).
- For existing ships whose IOPP Certificate was renewed between 8 September 2017 and 8 September 2019, if its previous renewal survey was before 8 September 2014, the D-2 standard would be applicable for them after the first next renewal, which falls between 8 September 2022 and 8 September 2024.
- For existing ships whose next IOPP Certificate renewal is after 8 September 2019, the D-2 standard will be applicable for them on this renewal survey.
- All ships constructed on and after 8 September 2017 shall follow the D2 standard. **After 8 September 2024, all ships shall comply with the D2 standard.** If the ship does not have a renewal certificate, it shall comply with the D-2 standard on and after the date determined by its administration, but this date cannot be later than 8 September 2024.⁵⁶

According to regulation B-5, all ships shall, as per their BWM Plan, remove and dispose of sediments in their ballast tanks, and all ships that are constructed in or after 2009 shall be designed and constructed to minimize the uptake and entrapment of sediments. All ships constructed before 2009 shall also, as far as practicable, minimize the uptake and entrapment of sediments.⁵⁷

⁵⁶ ibid. reg B-3.

⁵⁷ ibid. reg B-5.

Officers and crew, shall in relation to their duties on-board the ship, be familiar with their duty to implement the BWM Convention and shall be familiar with the BWM Plan.⁵⁸

1-10-3- Special Requirements in Certain Areas

States parties with the same environmental interest in an area are allowed, by means of regulation C-1, to impose additional measures to prevent the transfer of IAS. In doing so, States shall consult affected adjacent States taking into the account the related IMO guidelines, and inform the other State parties at least six months before the implementation (saving the case of emergencies and epidemics). They shall also, in accordance with UNCLOS and customary international law, obtain the approval from the IMO.⁵⁹

Under regulation C-2, States shall endeavor to notify ships about the areas which, due to contamination, biological issues, or other concerns, are not suitable for ballasting. Additionally, they shall notify the IMO and other affected and adjacent States.⁶⁰

1-10-4- Standards for Ballast Water Management

Generally, within the current framework of the BWM Convention, there are two standards: ballast water exchange standard (D-1) and ballast water performance standard (D-2).

Ships that are allowed (under regulation B-3) to apply the D-1 standard shall exchange their ballast water with at least 95 percent volumetric exchange.⁶¹ The ships can use one of the three methods:

- Flow-through method (simultaneous filling and outflow of ballast);
- Diluting method (pumping in of water from the top of a tank and releasing water from the bottom simultaneously); and

⁵⁸ *ibid.* reg B-6.

⁵⁹ BWM Convention (n 2) regs C-1, C-3.

⁶⁰ *ibid.* regs C-2, C-3.

⁶¹ *ibid.* reg D-1.

- Sequential method (discharge and refilling of tanks).

In any case, the ship shall demonstrate that at least 95 percent of ballast is exchanged. This can be accepted as achieved if the pumping through method has been conducted for three times the volume of the ballast tanks.

D-2 standard denotes that ballast water after treatment shall meet certain criteria in term of the number of viable organisms and microbe concentration.⁶²

The administration must approve the BWM systems (treatment systems). BWM systems which are installed before 28 October 2020 shall be approved under “Guidelines for the approval of ballast water management systems (G8)”⁶³ or BWM System Code, and BWM system which are installed on or after 28 October 2020 shall be approved in accordance with BWM System Code. It should be noted that the IMO approval is required for the BWM system with active substances.⁶⁴

Regulation D-4 allows a five-year testing period for ships cooperating with administration in testing prototype BWM system, provided that the ship participates in such trials before the D-2 standard becomes effective to her. However, in case of BWM system that are meant to have higher standards than under D-2, even for ships that apply the D-2 standards, such a five-year extra allowance is granted. Administrations in doing such tests and trials shall take into account the related IMO guidelines and allow participation of the minimum possible ships for effective test of the prototype BWM system.⁶⁵

IMO’s MEPC shall undertake periodic reviews for further development if the regulations and criteria. The committee in conducting the reviews shall take the following into account:

⁶² *ibid.* reg D-2.

⁶³ The ensure the robustness of the G8 type approval, MEPC adopted procedures for evaluating type approvals and the latest procedure is contained in BWM.2/Circ.43. also, to increase the transparency MEPC approved MEPC.228(65) listing the required information which are to be reported to IMO when approving a BWM system.

⁶⁴ BWM Convention (n 2) reg D-3.

⁶⁵ *ibid.* reg D-4.

- Safety of ship and crew;
- Environmental acceptability (not causing greater harm);
- Practicability; i.e., compatibility with ship design and operation;
- Cost-effectiveness; and
- Biological effectiveness.

1-10-5- Survey and Certification Requirements for Ballast Water Management

In line with the harmonization system for ships survey and certification of IMO Conventions, including IOPP certificate, the BWM Convention provides for initial, renewal, intermediate, annual and additional survey and certification.⁶⁶

⁶⁶ *ibid.* reg E.

D1 standard requiring ships to exchange ballast water in open seas, away from coastal areas. Few organisms survive.

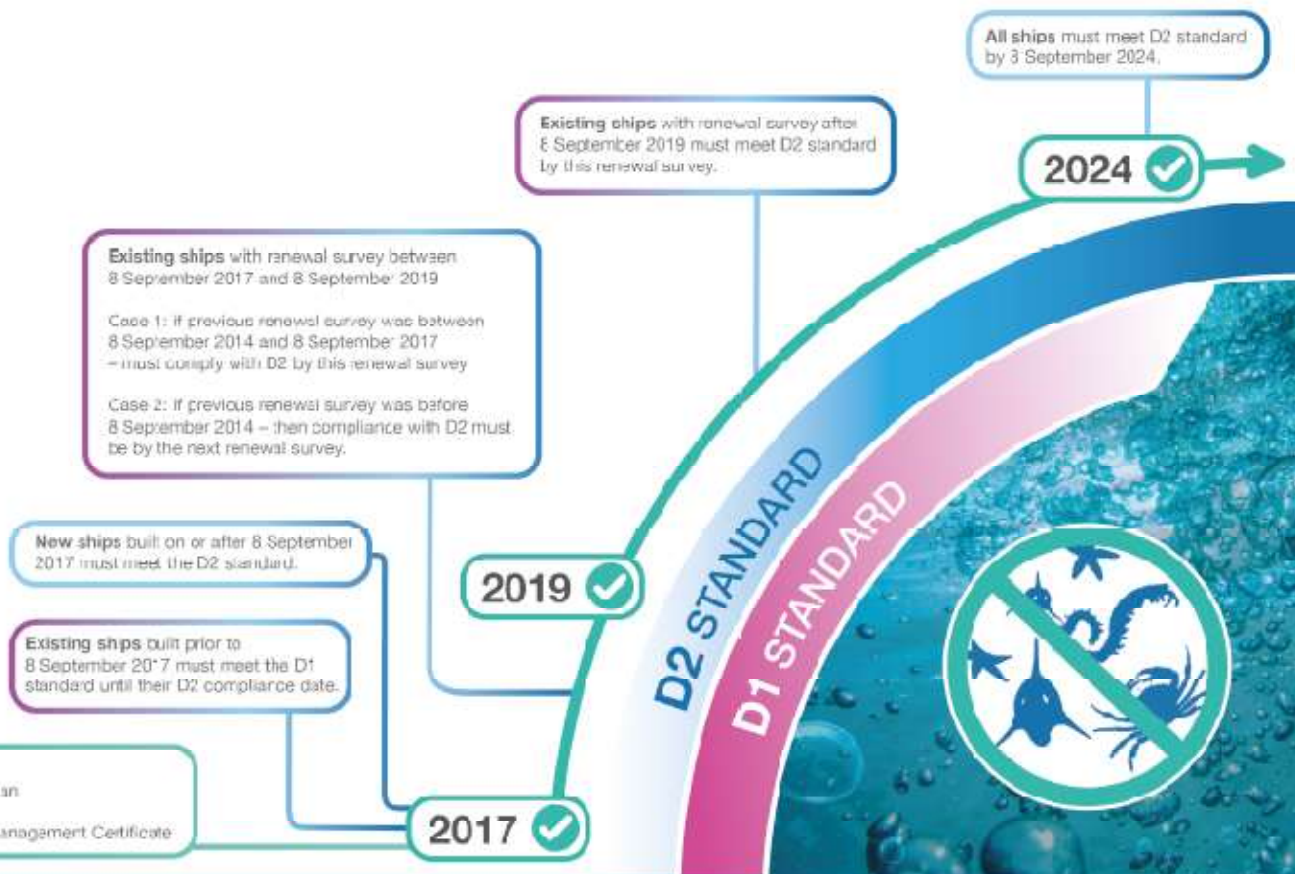
D2 standard specifying the maximum amount of viable organisms allowed to be discharged, including specified indicator microbes harmful to human health. Usually involves installing ballast water management system.

BACKGROUND INFO

- All new ships must conform to the D2 standard.
- Until the date when they have to meet the D2 standard, existing ships should exchange ballast water mid-ocean, to meet the D1 standard.
- Over time, all ships will have to meet the D2 standard.
- 'Renewal survey' refers to the IOPPC renewal survey under MARPOL Annex I

All ships must have:

- ballast water management plan
- ballast water record book
- International Ballast Water Management Certificate



Graph No.2: D1 and D2 implementation schedule

(Source: IMO, 'Technical circular no. 089/2017'(2017),

<http://www.imo.org/en/MediaCentre/HotTopics/BWM/Documents/BWM%20infographic_FINAL.pdf> accessed 12 January 2020.)

CHAPTER 2- THE NEED FOR PROPER IMPLEMENTATION OF THE BWM CONVENTION IN IRAN

2-1- Introduction

Almost no IMO Convention is self-executing. They require the proper implementation in the jurisdiction of the State Parties, and the BWM Convention is not an exception. This Chapter, after addressing the strategic importance of the Convention globally, regionally and nationally, reiterates the international obligations as well as national interests to support the argument for the need to adopt a new law for implementing the BWM Convention.

2-2- The BWM Convention and “1404 vision”, “Sixth Plan of Action” and PMO’s Maritime Policy

“1404 vision”⁶⁷ is the highest strategic instrument of Iran, approved and enacted by the Supreme Leader.⁶⁸ This strategic instrument projects out a 20-year vision for Iran including the targets to be achieved for the benefit of the Iranian society in 2025. In the first paragraph, it refers to human rights, including freedoms (first generation of HR) and dignity and social equality (second generation of HR). It reads as follows:

Iranian society in the dawn of national vision (2025) will have these feature:

[...] social justice, legitimate freedoms, protection of human rights, dignity, and benefiting from social and legal justice.⁶⁹

In the second paragraph, it refers to the Iranian nation as “endowed in advanced knowledge, capable in science and technology.”⁷⁰ It should be noted that one of the objectives and obligations (of conduct) under the BWM Convention is to promote the BWM system. Reading both obligations (BWM Convention and 1404 vision) implies that

⁶⁷ 1404 in Persian calendar is 2024-2025.

⁶⁸ ‘1404 Vision: The 20-Year National Vision of the Islamic Republic of Iran for the dawn of the Solar Calendar Year of 1404 [2025 C.E.]’ <<https://irandataportal.syr.edu/20-year-national-vision>> accessed 5 January 2020.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

Iran should invest in advanced knowledge, science and technology relating to BWM Systems required by Iranian owned ships and port authorities.

The first paragraph reads as follows:

Endowed with public health, welfare, food security, social security, equal opportunities, appropriate income distribution, strong family foundations, and distanced from poverty, corruption, discrimination and benefiting from a favorable natural environment.⁷¹

This paragraph alone covered many Sustainable Development Goals (SDGs). It refers to public health, public welfare, food security, social security, appropriate income distribution, distanced from poverty (zero poverty), and favorable natural environment (denoting the third generation of human rights).

This paragraph supports the necessity for full and effective implementation.⁷² It should be noted that a “favorable” environment entails the meaning, that not only the environment should be preserved for economic and ecological reasons, but also the psychological effect of enjoying a clean natural environment is of utmost importance.

The sixth paragraph mentions the “achievement of full employment and relative growth of per capita income level.”⁷³ It should be emphasized that marine resources and ecosystems for fishing, agriculture economic activities, and tourism are direct determining factors for coastal communities. Fishing and marine agriculture in the south and tourism in the north coastal areas in Iran are the main economic activities for the local communities.

“1404 vision” in its eight and last paragraph reads as follows:

It is a nation possessing productive and effective interactions with the rest of the world, based on the principles of respect, wisdom, and good-will.⁷⁴

⁷¹ *ibid.*

⁷² The environmental, health, welfare, food security, and economic aspects are addressed in section 1-2, and sections 2-3, 2-4 and 2-5.

⁷³ 1404 vision, (n 68).

⁷⁴ *ibid.*

According to ethical, religious, and legal principles, respecting international obligation (under treaty law) is of utmost importance. It crystallizes, the principle of *pacta sunt servanda* from Roman law and the principle of “duty to fulfill commitments” in the holy Quran which reads ‘[...] And fulfill [every] commitment. Indeed, the commitments are ever [that about which one will be] questioned.’⁷⁵

Looking from “1404 vision” perspective, not only the Government and Parliament should act to implement the BWM Convention in order to protect Iranians waters, and already vulnerable coastal communities, but also they should act positively to make sure that no Iranian ship or ships leaving Iranian ports would transfer IAS to coastal water of any other countries.

The Expediency Discernment Council, in line with “1404 vision”, adopts a plan of action every five years, which later is endorsed by the Parliament and acts as umbrella law for Parliament, and the Government. Currently, the Sixth Five Years (plan of action) Law of Economic, Social and Cultural Development of Iran is enforced and effective. It contains 124 articles and covers macroeconomics, budget and tax policies, monetary and banking policies, businesses and privatization, rural development and empowering vulnerable communities, transparency and anti-corruption, water (security), environment and natural resources.⁷⁶

In article 38,⁷⁷ it obliges the Government and regulatory entities to provide budget for implementing international obligations concerning protection of environment, to play their role in international projects regarding the environment, particularly if bound by international conventions. It also obliges the Government as a whole to monitor, and control the waste in the coastal areas using appropriate methods, allows and obliges the Government to encourage investment of private sector in environmental-related industry, in particular, waste management. Further, it obliges the Government to be in line with “green management” principles. Section 5,⁷⁸ related to the development of rural population and empowering the vulnerable communities, emphasizes the importance of the “spatial planning” and special economic, social, cultural rights and needs of local

⁷⁵ Holy Quran, Al-Isra, 34 <<https://quran.com/17>> accessed 28 January 2020.

⁷⁶ Law of Sixth Plan of Action (Approved 15 Mar 2017, Enacted 10 April 2017) (Iran).

⁷⁷ *ibid.* art 38.

⁷⁸ *ibid.* sec 5.

people particularly in vulnerable rural areas and areas that people are more dependent on nature.

Article 27(10)(3)⁷⁹ states that ‘[T]his plans and regulations for the development shall be in line with the real natural, economic and social needs of local people should be integrated.’ Therefore, the Government is obliged to provide the infrastructure to empower the rural areas in vulnerable communities to have a life with dignity and acceptable standards.

Article 27(10)(5)⁸⁰ stresses the importance of passive defense approach in three aspects of economic, social and cultural.

It is evident that within the sixth plan of action, the significance of investing in environment (protection), taking precautionary actions, protecting vulnerable communities, promoting welfare in areas with special reference to communities dependent mainly on nature (like coastal provinces), and with passive defense criteria (resulting in population distribution via spatial planning) are among the related prominent obligations of the government to implement the BWM Convention.

The Ports and Maritime Organization (PMO), as part of the Ministry of Road and Urban Development, were originally established in 1814 and is the exclusive national authority for all ports, and maritime activities in Iran.⁸¹

Among the policies of the PMO to promote the shipping and maritime industry, PMO in its policy’s fourth paragraph, states that “Promotion of qualitative and quantitative level of port and maritime services to be safe, secure and clean.”⁸² Indeed, PMO, as the competent maritime authority in Iran, is charged to promote safety, security and marine environment protection within Iranian jurisdiction.

Hence, PMO has taken all practical aspects to prepare for the implementation of the BWM Convention including, *inter alia*, training of PSC, providing facilities such as on-

⁷⁹ *ibid.* art 27.

⁸⁰ *ibid.*

⁸¹ PMO, ‘Ports and Maritime Organization Quality Policies’, <www.pmo.ir/en/aboutpmo/introduction> accessed 10 January 2020.

⁸² *ibid.*

board testing kits and instruments and ensuring proper organizational preparedness.⁸³ In fact, Iran (represented by PMO) was an active member of the GloBallast. So, PMO is capable of adequately implementing the BWM Convention in all aspects.⁸⁴

2-3- Environmental Impacts in ROPME Sea Area

Annually more than 45,000 ships visit the waters under control of Regional Organization for The Protection of the Marine Environment (ROPME⁸⁵).⁸⁶ As the Persian Gulf is a semi-enclosed area and Iranian coastal zone within the Oman sea include eleven highly sensitive environmental habitats,⁸⁷ the introduction of IAS can lead to the degradation of the marine environment. It should be noted that, generally, one of the main commodities transferred by sea, is oil exported from the area. Tankers which visit the area for loading oil carry huge amounts of ballast water to the area on their arrival voyage.⁸⁸

2-4- Impacts on Human Health of Local Communities

People in coastal areas are dependent on desalination plants for their fresh water supply, and a biological pollution may lead to disruption of fresh water supply, poisoning it, or spreading diseases.⁸⁹

It should be noted that a phenomenon known as “red tide” could be caused, or aggravated by the transfer of IAS. As an example, on 15 June 2019, the blooming of a poisonous species (Gymnodinium) in a large area of Chabahar Gulf led to the death of all living resources within certain areas including fish stocks and crustacean. A photo of this situation is provided in Graph No. 3.

⁸³ PMO, ‘Marine Environment Protection’

<www.pmo.ir/en/marineenvironment/marineenvironmentprotection> accessed 1 August 2020.

⁸⁴ See also section 3-4.

⁸⁵ ROPME sea area covers the Persian Gulf, Oman Sea and Arabian Sea. For details see ‘ROPME Sea Area’ <http://ropme.org/1_Sea_Area_EN.clx> accessed 31 July 2020.

⁸⁶ MEPC (59th session) IMO Docs 59/INF.3 (2 February 2009).

⁸⁷ Chabahar Port Authority, ‘Chabahar Port Marine Environment Orevention Measures’ <<https://chabaharport.pmo.ir/fa/saftey/zist-محیط‌زیست‌دریایی>> accessed 5 January 2020.

⁸⁸ See also section 1-2-1.

⁸⁹ See also section 1-2-2.



Graph No.3: Red tide in Chabahar Port by a poisonous algal species
(Source: the Author)

Consequently, because of the blooming itself (that passes desalination filters) and poisonous characteristics of the algae, the water supply of the city was also endangered. In similar situations, some coastal cities encountered really acute emergency health issues.⁹⁰

2-5-Passive Defense

A proper spatial planning and population distribution are among the factors in passive defense within borders; unfortunately, statistics show that coastal provinces (with particular reference to southern coasts) are rarely populated, and the average rate of population distribution varies between one-tenth to one-twentieth comparing to the national average population distribution. One of the major factors that in the long term may have resulted in this situation is the low productivity, and annual income in those areas.⁹¹

⁹⁰ 'Iran Battles Red Tide; A Soap-like Super Foam That's Killing Fish' (2 March 2009) <www.greenprophet.com/2009/03/red-tide-iran > accessed 6 January 2020.

⁹¹ Akbar Asghari Zamani and Davoud Hatami, 'Geographical Population Distribution Studies in Southern Coastal Provinces with Passive Defense Considerations' (2nd ed, No.2, Journal of Urban Development Studies 2018) 23.

It is evident that all the negative impacts in the absence of full and effective implementation of the BWM Convention would further aggravate the situation, while the Government has the obligation to attract more population in the coastal areas.

2-6- International Obligations for Implementing the BWM Convention

Within the international legal sphere, Iran as a State Party to the Convention, according to article 38(1)(a) of Statute of the International Court of Justice⁹² (ICJ) is bound to fulfil its international obligations thereof. Furthermore, implementation of this Convention is in line with the precautionary approach⁹³ within international customary law. This obligation may be reinforced within IMO Member State Audit Scheme (IMSAS).

2-6-1-Obligations under the BWM Convention as a Binding Treaty

Iran, in 2010, approved the BWM Convention in the Parliament, and on 6 April 2011, deposited the document of accession to IMO. In 2017, with the entry into force of the Convention, it became an international obligation for Iran.

The entering into force of the BWM Convention in 2017 has two major consequences for Iran.

1) Ships flying Iranian flag after the date of enforcement are obliged to comply with the rules of the Convention. This aspect is practically connected with the international character of shipping and the principle of “no favorable treatment”. It is inevitable and, even without ratifying the Convention or enforcement in the domestic law, PSC procedures and the role of regional Memorandums of Understanding (MoU’s) would pressure the fleet to fully comply.

2) Ships that call Iranian ports, particularly loading ports, will be subject to the BWM convention, regardless of their nationality (whether State Party, or not). In fact, it is both the country’s right and duty to protect its environment through the full and effective implementation of the BWM Convention’s rules and regulations. This aspect of enforcement without proper legislation, the delegation

⁹² Charter of the United Nations and Statute of the International Court of Justice (adopted 24 October 1945, entered into force 24 October 1945), 1 UNTS XVI.

⁹³ See Mary Stevens, ‘The Precautionary Principle in the International Arena’ (2002) Vol 2 Issue 2 Sustainable development Law and Policy 13. See also CBD 1992 (n 8), and Rio Declaration (n 6).

of power, and enforcement measures (penalties), and further detailed and legally binding regulations is not achievable.

Nonetheless, it is the fact that enforcing and implementing the Convention within jurisdiction, under the Vienna Convention on the Law of the Treaties (VCLT)⁹⁴ as well as under the customary international law (*pacta sunt servanda*) are international obligations of any State Party to the Convention, breach of which (if attributable) can lead to the international responsibility of the State in breach.

2-6-2-IMO Member State Audit Scheme (IMSAS)

In 2003, IMO formally adopted a Voluntary IMO Member State Audit Scheme (VIMSAS),⁹⁵ in which Iran contributed and was audited in 2011.⁹⁶ VIMSAS included audit for the effective implementation of ten major IMO instruments. The scheme was in line with State's international obligations to implement and enforce IMO mandatory instruments.⁹⁷ In general, the following Non Conformities (NCs) and areas for improvement (observations) are always of the main concern by the IMO in implementation of mandatory instruments:

NCs:

- (1) Report to IMO;
- (2) National Legislation;
- (3) Recognized Organizations (ROs).

Observations:

- Evaluation;
- Training;

⁹⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT 1969) art 31.

⁹⁵ IMO General Assembly (23rd) Resolution A.946(23) (London 2003).

⁹⁶ Majid Tazam et al, 'Objectives, Principles and Scope of Voluntary IMO Member States Audit Scheme, in Focus of Iran' (2015) Vol 1 No. 2 Journal of Maritime Transport Industry, 49.

⁹⁷ Resolution A.946 (23) (n 95).

- Personnel;
- Control and Monitoring;
- Recognized Organizations;
- National Legislation;
- Documented Strategy;
- Documentation;
- Enforcement Provisions;
- Guidelines and Instructions.⁹⁸

IMO From 2016, implemented IMSAS, which is the current mandatory audit scheme.⁹⁹ It should be noted that, under the current framework, IMSAS does not cover the BWM Convention, but having in mind the full enforcement of D-2 standard in 2024, and the importance of this Convention to preserve the marine environment, it is not far-fetched to believe that within the coming years, it would also be incorporated in IMSAS framework.

2-6-3-Obligations under Framework of the ROPME Sea Area and the Tehran Convention

ROPME was established under the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution¹⁰⁰ in 1978. The Kingdom of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates are members.¹⁰¹

ROPME sea area is defined in article 2 of Kuwait Convention and includes the Persian Gulf, Oman sea and parts of the Arabian Sea. Article 4 of the Convention which refers to

⁹⁸ Technical Cooperation Committee (60th) TC 60/6/1 (London 6 April 2010).

⁹⁹ IMO, 'Member State Audit Scheme & Implementation Support' <www.imo.org/en/OurWork/MSAS/Pages/default.aspx> accessed 30 January 2020.

¹⁰⁰ Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (adopted 24 April 1978, entered in force 1 July 1979) 1140 UNTS 133 (Kuwait Convention).

¹⁰¹ ROPME, 'Establishment of ROPME' <http://ropme.org/1_Establishment_ROPME_EN.clx> accessed 24 January 2020.

pollutions from ships, requires the Member States to ensure ‘effective compliance in the Sea Area with applicable international rules.’¹⁰²

ROPME, in 2009 introduced the same approach of the BWM Convention regulation B-4 and standard D-1, and included the whole ROPME sea area.¹⁰³ It should be noted that proper control over ships, and effective implementation of the BWM Convention is required to ensure those requirements are met, and the Iranian ecosystem is well protected from transfer of IAS.

In addition, after the entry into force of the BWM Convention in 2017, and the introduction of a timeline for the application of D-2 standard, more stringent and robust control and enforcement are required to ensure that our international and regional rights are fully respected and our environment is properly preserved and protected.

Regarding the Caspian Sea, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea¹⁰⁴ (Tehran Convention) was adopted in 2003. This regional Convention institutionalizes the marine environment protection in the Caspian Sea, and introduces the general framework.¹⁰⁵

The Tehran convention has four protocols out of which “The Protocol for the Conservation of Biological Diversity¹⁰⁶ (Ashgabat Protocol) addresses the IAS. However, the Protocol is not yet in force.¹⁰⁷

This Protocol does not cover or link to the BWM Convention; nonetheless, it leaves the implementation of the Protocol for the conservation of biological diversities to the national law of the State parties.¹⁰⁸ There are, however, limitations for application of the national law, but these limitations are related to designation of Protected Areas of the

¹⁰² Kuwait Convention (n 100).

¹⁰³ MEPC 59/INF.3 (n 86).

¹⁰⁴ Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention) (adopted 4 November 2003, entered into force 12 August 2006)
<www.tehranconvention.org/IMG/pdf/Tehran_Convention_text_final_pdf.pdf> accessed 31 July 2020.

¹⁰⁵ ‘Tehran Convention’ <<http://www.tehranconvention.org/spip.php?rubrique1>> accessed 31 July 2020.

¹⁰⁶ The Protocol for the Conservation of Biological Diversity (Ashgabat Protocol) (adopted 30 May 2014, not yet into force)
<http://www.tehranconvention.org/IMG/pdf/Protocol_on_the_Conservation_of_Biological_Diversity_en.pdf> accessed 31 July 2020.

¹⁰⁷ *ibid.* art 23(5).

¹⁰⁸ *ibid.* art 5.

Caspian Sea (PACS), and the legal status of the Caspian Sea. Furthermore, Article 7 of the Protocol, regarding Alien Species states as follows:

The Contracting Parties shall:

- (a) Regulate the introduction of alien species and prohibit those that may have harmful impacts on the ecosystems, habitats or species and regulate those already introduced which are causing or may cause damage;

Regardless of the fact that, in stark contrast with ROPME framework, the Tehran Convention, does not directly link or provide similar or more stringent provision for Ballast Water Management, It seems that the domestic law of littoral States (which are in conformity with Generally Accepted Rules and Regulations, i.e. BWM Convention provisions) is applicable. However, special regime of the the Caspian sea in time and quality of applying such regulation should be taken into the consideration.

2-7-Conclusion

The implementation of the BWM Convention according to the Constitution which is complemented by the Civil Code, international law derived from treaty law, and the customary international law unequivocally and unquestionably is an obligation for Iran.

Moreover, full and proper implementation and enforcement of the BWM Convention would result in safeguarding environmental, ecologic, economic, public health, welfare and security interests of Iran.

It should be pointed out that regardless of proper and full implementation and enforcement of the BWM Convention on its fleet (which the costs are significant for D-2 standard), the Iranian fleet – because of various co-operation MoUs between PSCs of contracting States and based on “no favorable treatment” is obliged to comply with the Convention. Indeed, no proper implementation and enforcement of the BWM Convention may lead to blacklisting the Iranian flag. Entering the blacklist, besides reputation impacts, has major economic, and strategic impacts as well.

CHAPTER 3: HOW THE BWM CONVENTION SHOULD BE IMPLEMENTED IN IRAN'S LEGAL AND ORGANIZATIONAL SYSTEM

3-1- Introduction

Iran already acceded to the BWM Convention, and via the BWM Law of Accession incorporated the BWM Convention into the domestic law. However, the said incorporation, lacks many measure , *inter alia*, a proper approach to violations and penalties, delegation of power, addressing the permissible rules, courts jurisdiction, and other powers and responsibilities. Indeed, the Law of Accession incorporated the translated version of the BWM Convention in Farsi, and does not provide a legal instrument , i.e., a law or executive regulation, as a framework for the effective implementation.

This chapter, after explaining related legal characteristics of the Iranian legal system, firstly, addresses the shortcomings of existing BWM Convention legislation in Iran. It then explores how the 1389 Law on the Protection of Navigable Waters and Seas from Oil Pollution (and three subsequent executive regulations) covers the implementation of International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL) Annex I, and the 1992 Protocol to International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 92). Finally, it proposes a framework for the Law properly implement the BWM Convention.

3-2-Iran's Legal System and BWM Convention Existing Legal Framework.

Iran follows the civil law system and accordingly is among monist countries. However, it seems that the status of international conventions, particularly IMO Conventions, because of tacit acceptance procedure, requires a more detailed review.

This section briefly elaborates on the status of the BWM Convention in the Iranian legal system, including substantive issues and admissibility in courts, tacit amendment approach, implementation and enforcement challenges. As the BWM Convention is already approved, this explanatory note does not cover the procedure of approval and probable legal challenges. It suffices to mention that every law after approval of Parliament and signature by the President (within five days) is to be published within

three days in the official gazette, and after 15 days of being published, automatically, the law will be enforced nationwide.¹⁰⁹

3-2-1- Status of Treaties in the Iranian Legal System

The Civil Code in Article 9 prescribes the status of a treaty rule in the Iranian Legal system. It states that ‘Treaty rules which in accordance with the Constitution, were concluded between the Iranian Government and other governments, **are as the law.**’¹¹⁰

Generally, there are two schools of thought in this regard. Some authors argue that treaty rules have the same legal status as the domestic law. Naser Katuzian¹¹¹ states that ‘[W]henver a law which is against a treaty is enacted, the court shall enforce the new law which is the latter will of the legislator.’¹¹² It seems that he draws a rigid line between two different legal spheres of international and domestic law. This approach is similar to the dualist States.

Per contra, some authors claim that not only treaty rules do not have a lower rank but also have a higher status compared to the domestic law. There are different reasons leading to the same argument including the theory of sanctity of treaties, monism theory and contract theory.¹¹³ He believes that treaty rules rank between the Constitution and the domestic law.

For the hierarchy and possible contradiction with the Constitution, it should be mentioned that treaties before approval and ratification or accession are tested (by the Guardian Council) against the Constitution. Hence, at least for IMO Conventions, there seems to be no room to address rank or possible contradiction between treaties and the Constitution.

Nevertheless, considering the express rule of customary international law which is codified in Article 27 of the VCLT, it is evident that in international law States cannot rely on their domestic laws in breach of their international obligations.

¹⁰⁹ Civil Code 1928, arts 1-2.

¹¹⁰ *ibid.* art 9.

¹¹¹ Nasser Katouzian is known as father of law in Iran.

¹¹² Naser Katouzian, *Civil Law within Contemporary Legal Order*, (17th edn, Mizan 2008) 31.

¹¹³ Mohammad Javad Shariat Bagheri, ‘Supermacy of the International treaties over the Domestic Law’ (2012) 56 *Journal of Legal research* 279, 284.

It should be emphasized that, since the BWM Convention is not a self-executing convention; the following aspects for full and effective implementation need to be taken into account:

- Clarifying the status of the rules of the convention and further amendments in the domestic legal system in case of any discrepancy with the domestic law, and applicability in local courts;
- Clear delegation of power to an entity as the leading authority;
- The distinction between duties and powers of the PMO, the Department of Environment (DOE) and other related governmental entities;
- Adequate enforcement measures in term of penalties in case of violations;
- Clear approaches for research and development and co-operation with non-governmental entities such as shipping companies, universities, and research centers;
- Budgetary and fiscal approach for implementation;
- Delegation of power to proper authorities to adopt further required technical regulations;
- Delegation of power to have a proactive and proper approach toward amendments, and particularly amendments to the Annex and the Guidelines which generally include technical or procedural matters through the tacit acceptance procedure; and
- Clarifying the Decision for the permissible rules in the Convention that provide some degree of flexibility for each Member State.

After the accession to the BWM Convention, PMO adopted a guideline to implement the Convention. This guideline could be used by PSC and Pollution Prevention officers, and other officials “in the PMO” as a guideline of conduct. But, according to article 138 of

the Constitution,¹¹⁴ the regulations to complement a law passed by the Parliament should be passed and communicated to the President. Should there be any discrepancy with the law, it should be disapproved. A similar approach can be observed when adopting executive regulations under 1389 law on the protection of navigable waters and seas from oil pollution.¹¹⁵

Besides, there are no penalties for the violations. Furthermore, it is mainly focused on the application D-1 standard. It does not provide a remedy for cases where complying with the standard is not possible.¹¹⁶ However, it seems that many shortcomings in the guideline are linked to the fact that the fate of the Convention was not yet clear.

3-2-2- Applicability in Domestic Courts

The law implementing the BWM Convention should clearly define which courts have the jurisdiction and can be seized to enforce the law implementing BWM Convention, and subsequent executive regulations. It should also refer to the technical guideline of the IMO to be applicable in the court proceedings.

3-2-3- Amendment Procedure

The tacit acceptance procedure is a relatively new concept and practice in international law. The classic procedure was almost similar to the enforcement criteria required for the enforcement of a treaty. Hence, it was burdensome and time-consuming. While one may argue that a classic approach is more desirable for some treaties, IMO Conventions and generally for Conventions that are technical or which, due to various factors, require more frequent amendments, it may be an impossible task.

On the other hand, the tacit acceptance procedure does not require the express consent of the parties, but the “silence” or no objection within a prearranged deadline is construed as an acceptance. It should be noted that the express consent of parties supporting this procedure is already given when ratifying or acceding to the treaty.

¹¹⁴ Constitution Law of Islamic Republic of Iran 1979, art 138.

¹¹⁵ 2013 Executive Regulation on Article 6 of the 1389 Law, 2011 Executive Regulation on Article 5 of the 1389 Law and 2014 Executive Regulation on Article 3(3) of the 1389 Law.

¹¹⁶ PMO, ‘Guideline for Implementation of BWM Convention by Flag state, Port State and Coastal State’ (2010) <www.pmo.ir/psd_content/media/law/635656434548616620.pdf> accessed 5 January 2020.

The same procedure is applied in the BWM Convention, which it prescribes classic amendment procedure for the articles of the Convention,¹¹⁷ but adopts a tacit amendment procedure for the Annex. Article 19(2)(e)(2) provides a twelve-month period within which if one-third of State Parties do not object, the amendment shall be deemed accepted and in force.¹¹⁸

According to the law of accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran¹¹⁹ (BWM Accession Law) and subsequent practices, Parliament (and subsequently the Guardian Council) shall, under article 77 of the Constitution, approve every amendment to the Convention and its annexes, if votes in favor (to accept the amendment) by the Parliament.

This procedure may be necessary for general obligations under the Articles of the Convention, for the amendment of which the Convention itself adopts a classical approach, but for the following reasons it is undesirable, unnecessary and impractical to require the same amendment procedure for purely technical or procedural matters in the Annex of the Convention:

- It may lead to undesirable and unnecessary international responsibility for the country;
- It will impose an unnecessary workload on the Parliament and the Guardian Council;
- It hinders the Government, by not allowing a prompt reaction for the benefit of maritime safety, marine environment protection or safeguarding labor rights and many other related functions; and
- It will practically hinder the promotion of the rule of law in Iranian jurisdiction.

¹¹⁷ BWM Convention (n 2) art 19(2)(e)(1).

¹¹⁸ BWM Convention (n 2) art 19(2)(e)(2).

¹¹⁹ The Law of Accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran 2010 (BWM Accession Laws).

Hence, when incorporating a treaty, the above mentioned should have been considered. However, the 3rd provision of the BWM Accession Law prescribes the contrary. So, it is wise to repeal this provision and limit the classical approach to the main Articles. Parliament should delegate the power for amending the Annexe or the Appendixes to the related executive branch. It should also delegate the power to the executive branch to adopt and amend the regulations related to technical aspects such as the Annex .

3-2-4- 1389 Law for Implementation of MARPOL and CLC 92

This act is briefly addressed here, to demonstrate how Iranian legal system tried to implement its international obligations under the MARPOL, and CLC 92.

Before 2010, there were some ship source oil pollutions, which due to lack of proper legislation, were never referred to the court, or even if referred, because of lack of enforcement mechanisms, there were no deterrent consequences.¹²⁰

In 2010-2011, based on a draft proposal from PMO (through the Ministerial Board) to the Parliament, the 1389 Law on the Protection of Navigable Waters and Seas from Oil Pollution¹²¹ (1389 Law) was adopted. Later, according to the delegations provided to the Ministerial Board, three subsequent executive regulations were adopted to elaborate further details. Although in practice, there are some aspects of the Law that are challenging for implementation, it can be referenced as the accepted approach in the Government and Parliament which is successfully tested in the court proceedings.

Firstly, although these conventions were already translated and became part of national law, the system showed that a separate law enacted by the Parliament is the accepted approach within the Iranian legal system. Further, the 1389 Law provided for penalties for violations and delegated the power to enact executive regulations to the executive branch.

On the other hand, while the same approach is advised, the following observations for improvement are made:

¹²⁰ For more details of the pollutions before 2010 and problems in implementing 1389 Code see Tazam M, 'Compensation for Oil Pollution Accidents from Tankers in Iranian Waters' (Master, Chabahar Maritime University 2012).

¹²¹ 1389 Law on the Protection of Navigable Waters and Seas from Oil Pollution (1389 Law)

- The Law did not properly address the amendment procedure (tacit acceptance procedure) in the delegation of powers;
- The Law does not address the co-operation and knowledge transfer between the judicial and executive branch; and
- In the case of some infringements due to negligence, it leads to ambiguous or inconclusive results.

Regardless of the shortcomings mentioned, the 1389 Law was the first comprehensive legal instrument for a full and effective implementation and enforcement of a maritime convention in Iran. Hence, it can be argued that taking the same approach, while trying to address the issues mentioned above, along with a proactive approach of addressing the probable future challenges, would be desirable to ensure that Iran's international obligations are met and effective efforts are made to conserve, and protect the marine environment.

3-3-The Proposed Approach for Implementing the BWM Convention

Considering the relatively positive experience using a separate law implementin the BWM Convention which would be complemented by executive regulations adopted by Ministerial Board , the following arrangements for full and effective implementation of the BWM Convention is suggested:

- I. A law enacted by Parliament to fully and effectively implement the BWM Convention, elaborating on the obligations under "Articles" of the Convention that, *inter alia*, provide a co-operation framework, delegating the required powers and imposing enforcement measures such as penalties and administrative sanctions.
- II. Executive regulations, to implement the technical and procedural requirements including the Annex, Guidelines, and further technical amendments.

3-3-1-Delegations of Power Required and Responsibilities

In line with Article 2 of the Convention and Article 1 of the BWM Accession Law,¹²² the law should designate PMO (the administration) as the leading authority to implement the BWM Convention.

In line with Article 2 of the Convention, the law should delegate the power to adopt executive regulations for implementing the Annex, the IMO guidelines, and further amendments to the Annex and the Guidelines to the Ministerial Board.

In line with Article 2(3) and 2(4) of the Convention, the PMO in co-operation with Department of Environment of Iran (DOE) shall effectively contribute in ROPME efforts, to make sure of the proper and harmonized implementation. In case of any higher standard required, in line with other ROPME members or other international initiatives, such standards shall be proposed by PMO to the Ministerial Board for amending the executive regulations subsequently.

Under Article 2(5), PMO should be permitted to establish a “National BWM Fund” to support Research and Developments. All monetary fines and sanctions shall be deposited to the Fund. In addition to fines and sanctions, ---- percent of the port tariff levied by PMO shall be deposited directly to the Fund. The Government (Ministerial Board) shall administer the Fund in line with articles 5 and 6 of the Convention under PMO’s mandate.

In line with Articles, 7,9,10,11,12,13 and 14 full delegations of power should be granted to the PMO.

3-3-2-Permissible Rules in the Convention (Optional Rules)

In line with Article 3(1)(b), until and unless a substantive and reliable research, approved by PMO and DOE, is conducted, recognizing the apparent different marine ecosystems in the Persian Gulf and Oman Sea, and adopting a precautionary approach, ships solely operating between these two sea areas shall not be exempted by Article 3(2)(b), 3(2)(c).

¹²² BWM Accession Law 2010 (n 119).

The Persian Gulf is a semi-enclosed sea with a gentle continental slope and relatively low depth. Hence, taking the same precautionary approach, it is advised to not exempt ships operating only in the Persian Gulf under 3(2)(d), until and unless substantive and reliable research, approved by PMO and DOE, is conducted and presented to the Parliament for further amendments.

For alternative methods under regulation B-3, PMO with consultation of DOE under an Executive regulation (in line with IMO Guidelines) is mandated to decide case by case through comprehensive studies and proper consultation and reporting.

PMO in consultation with DOE, individually or jointly with maritime Administration or related authorities of ROPME State Parties will decide on the necessary additional measure consistent with international law. In line with regulations in section C of the Annex and related IMO Guidelines, PMO in consultation with DOE, individually or jointly with maritime Administration or related authorities of ROPME State Parties will decide on the special requirement in certain areas in the Persian Gulf and the Oman Sea.

3-3-3-Enforcement Measures in Case of Violations

In line with Article 8 of the Convention, the law shall provide for adequate administrative delegation of power to PMO. PMO shall be charged to file the legal proceedings in case of a violation.

The court of each province shall have the jurisdiction to commence legal proceedings and impose the sanction in case of a violation. To ensure the proper implementation, the rule of law and proper administration of justice, the law, and executive regulations, in addition to the authoritative Farsi version, shall be officially translated into English. The Government shall promulgate the English version along with the Farsi version. For the purpose of interpretation and application, should there be any discrepancy, the Farsi version shall prevail as the authoritative text.

In line with article 8 of the Convention, to make sure of imposing sustainable deterring penalties, and to prevent frequent amendments due to change in the exchange rate, the monetary sanctions in the law should be defined in Special Drawing Right (SDR). It

should be noted that the same approach was taken for insurance under the 1389 Law¹²³, for all seagoing vessels including Iranian non-conventional ships, and even wooden non-conventional dhows that are solely engaged in cabotage or fishing.¹²⁴ For Iranian ships or for the ships which are wholly or partially (more than 50 percent) owned by Iranian subjects, the exchange rate to Rial and for ships not registered in Iran the exchange rate to USD, with the reference to International Monetary Fund (IMF) exchange rate, at the time of settling such sanction, shall be applicable.

3-3-4- Dispute Settlement between State Parties

Any dispute arising from the interpretation and application of the Convention between Iran and other States, under Article 15, should only be conducted through the Ministry of Foreign Affairs and with co-operation of the PMO. Article 457 of the Code of Civil Procedure and Article 139 of the Constitution on dispute settlement shall be considered.

Article 139 reads as follows:

Dispute settlement related to public and governmental assets in court or through arbitration, in every case, is subject to the approval of Ministerial Board and Parliament shall be notified. In cases where the other party is a foreign subject and in important cases where the other party is Iranian, it shall be approved by the parliament.¹²⁵

Article 457 of the Code of Civil Procedure reproduces the same provisions in article 139 of the Constitution. This requirement is reflected in the second provision of the BWM Accession Law.¹²⁶

3-3-5- Proposed Framework for the Applicability in Domestic Court

In line with articles 2 and 8 of the Convention, and considering the current legal challenges¹²⁷ the law should expressly state that:

¹²³ 1389 Law (n 121).

¹²⁴ 2011 Executive regulation on Article 6 of the Law on the Protection of Navigable Waters and Seas from Oil Pollution 1389, art 5.

¹²⁵ Constitution Law (n 114) art 139.

¹²⁶ BWM Accession Law (n 119).

¹²⁷ See sections 3-2-1 and 3-2-2.

- The treaty rules (here the BWM Convention) shall have the force of law;
- All the domestic courts, within their jurisdiction, shall apply the BWM Convention, the law implementing the BWM Convention, and further executive regulations adopted by Ministerial Board;
- No law or regulation shall have the power to revoke any BWM Convention rules while it the Convention is in force for Iran. If there is any discrepancy in interpretation and application with other laws, the BWM Convention rules shall prevail.

3-3-6- Proposed Amendment Procedure

In line with the discussion in section 3-2-3, it is wise to delegate the power to adopt executive regulations relating to the enforcement of the Annex and the related IMO Guidelines and further possible amendments to the Annex and the Guidelines to the “Ministerial Board.”

Under Article 19 of the Convention, Parliament under Principle 77 of the Constitution should approve all amendments related to the Articles. For the amendments related to the Annex and the guidelines, the Ministerial Board by the proposal from PMO through Ministry of Road and Urban Development, shall within reasonable time justify the objection (if any), and subsequently communicate with the depository. Where no objection is deposited to IMO, and an amendment is deemed enforced, the Ministerial Board shall apply necessary amendments in executive regulations to avoid undesirable international responsibilities, and to protect the marine environment.

3-4- Organizational Factor and Financial Burden

The first provision of the single-article of the BWM Accession Law designated PMO as the organ responsible for implementing the Convention.¹²⁸

Regarding the technical, training and organizational preparedness, for full and effective implementation of the BWM Convention, the following measures are already in place:

¹²⁸ BWM Accession Law (n 119).

- PSC officers in all ports, are sufficiently trained and in line with ISO10015 standards, every year refreshment courses and on-job evaluations are being conducted;
- Technical facilities to make sure of the proper implementation such as “10 cells kit” (for onboard testing) is already provided in ports, training courses for all relevant officers provided; and
- Accredited laboratories with co-operation of DOE under relevant standards are available in coastal provinces.

PMO is practically independent of the direct budget from other governmental incomes, and is directly funded by the port’s tariff. Hence, it should keep all related equipments and human resources up-to-date, and fulfill all other technical and managerial requirements.

3-5- Executive Summary

In line with the explanatory note, with particular reference to chapter three, ‘the Law to Implement the International Convention for the Control and Management of Ships’ s Ballast Water and Sediments, 2004 as Amended’ consists of 15 articles. It implements the main Articles of the Convention, and introduces the framework to ensure the effective implementation of the BWM Convention.

The ‘General Framework’ which is inserted as the Article 2 of the Law, repeals the Provision 3¹²⁹ of the BWM Accession Law. Further, it clarifies the status of the rules of the Convention vis a vis domestic law in the court, and clarifies that the local courts have the required jurisdiction.

The amendment procedure is also prescribed in this Article, in which the amendments to the Articles of the convention would be treated by the classical approach. This approach is both in line with Article 77 of the Constitution, and the international obligation under the Convention. Hence, the power to apply the tacit acceptance amendment procedure to the Annex and the appendixes, which is prescribed in the convention is endowd to the Ministerial Board.

¹²⁹ See section 3-2-3.

The power and responsibility for approving the Executive Regulations, in line with the Annex and guideline developed by the Organization, is assigned to the Ministerial Board. PMO, in consultation with DOE and other related authorities, is charged to prepare the draft of such Executive Regulations.

An special attention, is given to the role of regional co-operation, particularly within the ROPME sea area. In addition, to promote the purpose and functions of the convention, special consideration is given to the research and development. All monetary sanctions and penalties shall be deposited into the 'National BWM Fund'. Also, a portion of Ports's Tarrif is designated to be deposited directly into the FUND. PMO, DOE and Ministry of Science and Research are charged to manage the Fund resources to promote the objectives of the BWM Convention.

PMO within its capacity is charged to ensure the effective implementation of the Convention within the PSC, FSC and certification mechanisms. PMO is also charged to ensure the availability of adequate reception facilities, in the repair or construction yards. Violations are divided into two categories. The violations which are due to negligence or mistake are only subject to a monetary sanction. However, violations with the intent to cause damage to the environment, human health, property or resources or those of other States or by recklessness and with the knowledge that such damage would probably occur are subject to either monetary and imprisonment penalties or both of them. All monetary sanctions are prescribed in SDR to avoid the adverse effect of sudden changes in the exchange rate. This is to make sure that the sanctions and penalties are deterrent for a longer period, and to avoid frequent amendment to the law.

Reporting system, as the third step of the implementation of a Convention is also incorporated. PMO is charged to communicate to other Administrations and the IMO.

Regarding the permissible rules in the Convention, special attention is given to the different and very sensitive areas between the Oman sea and the Persian Gulf, to the regional frameworks, in particular ROPME, and to the need for comprehensive studies and co-operation when applying exemptions provided as permissible rules in the Convention.

On the other hand, as the law only covers the articles of the Convention, an Executive Regulation is also attached covering the Annex of the Convention. These two instruments are linked via Article 2.7 of the law, and other provisions within article 2 and the BWM Accession Law. The Executive Regulation comprises of five sections, mirroring the five

sections in the Annex. Proper and clear delegation of power to PMO, and as appropriate to DOE is prescribed within the Executive Regulation.

To: Dr. Hasan Ruhani

Honorable President of Islamic Republic of Iran

Reference to letter No. ----- on ----- in line with principle 123 of the Islamic Republic of Iran Constitution, the “The Law to Incorporate the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004 as amended” into the Laws of the Islamic Republic of Iran and to Provide for the Effective Implementation Thereof” which was proposed by a draft law to Parliament, in ... September 2020 in an open session and approved by Guardian Council is herewith submitted.

Mohammad Bagher Ghalibaf (Parliament’s Speaker)

(Signature)

Date: ... December 2020¹³⁰

Date of registry in presidential central secretary:

¹³⁰ The law will be in force, after approval and publishing in the official Gazette. See section 3-2.

The Law to Implement the International Convention for the Control and Management of Ships' s Ballast Water and Sediments, 2004 as Amended

Article 1 Definitions

For the purpose of this Law, unless expressly provided otherwise:

- 1- “Administration” means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of I.R.Iran, the Administration is the Government of I.R.Iran. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the I.R.Iran exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the I.R.Iran. In line with provision 1 of the “The Law of Accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran”, the Ministry of Road and Urban Development (Ports and Maritime Organization), unless decided otherwise by the Government, is responsible for the implementation of the Convention.
- 2- “Ballast Water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.
- 3- “Ballast Water Management” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.
- 4- “Certificate” means the International Ballast Water Management Certificate.
- 5- “Committee” means the Marine Environment Protection Committee of the Organization.
- 6- “Convention” means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, as amended.
- 7- “DOE” means Department of Environment of I.R.Iran.
- 8- “FSC” means Flag State Control officers who are authorized by PMO to conduct port State inspection on ships flying Iranian flag or under its authority.

- 9- “Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.
- 10- “Harmful Aquatic Organisms and Pathogens” means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.
- 11- “Organization” means the International Maritime Organization.
- 12- “PMO” means Ports and Maritime Organization of I.R.Iran.
- 13- “PSC” means Port State Control officers who are authorized by PMO to conduct port State Inspection on foreign ships which voluntarily entered Iranian ports or its offshore installations.
- 14- “ROPME” means the Regional Organization for the Protection of the Marine Environment, which established under the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.
- 15- “Secretary-General” means the Secretary-General of the Organization.
- 16- “Sediments” means matter settled out of Ballast Water within a ship.
- 17- “Ship” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.

Article 2 General Framework

- 1- This law repeals the provision 3 of the The Law of Accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran.¹³¹
- 2- According to principle (77) of the Islamic Republic of Iran Constitution, the Government shall seek the approval of Parliament to implement any amendments to the articles of the Convention.

Should the Parliament not approve the amendments to the articles, the Government shall notify the objection within the deadline provided in the Convention to the

¹³¹ See annex I

Organization. Such amendments will not be enforced for the government Islamic Republic of Iran.

- 3- Any amendments to the Annex of the Convention and guidelines, if adopted in accordance with Article 19 of the Convention, shall be objected or accepted by the Ministerial Board which shall take a timely decisions after the proposal of the Ministry of Road and Urban Development. The accepted amendments, or the amendments which the Government did not object, is in force for I.R. Iran, and shall be incorporated into the relevant executive regulations.
- 4- In case of inconsistency between this law or other domestic laws and the Convention, the text of the Convention as amended and in force for I.R. Iran is prevailing and has the force of law.
- 5- The Annex forms an integral part of the Convention. Unless expressly provided otherwise, a reference to the Convention constitutes at the same time a reference to the Annex.
- 6- All provincial local courts have jurisdiction over cases related to this law or the Convention.
- 7- PMO is responsible for preparing and proposing all executive regulations to the Ministerial Board, through the Ministry of Road and Urban Development. All the required executive regulations to implement the Annex and the guidelines developed by the Organization shall be approved by the Ministerial Board within the six months of the approval of this law. Until and unless the required executive regulations are approved, the Annex to the Convention and the guidelines developed by the Organization have the force of law (as regulations) and shall be implemented by PMO.
- 8- This law, and executive regulations adopted to fulfill paragraph 7, in addition to the authoritative Farsi version, shall be officially translated into English. PMO shall promulgate the English version along with the Farsi version. For the purpose of interpretation and application, should there be any discrepancy, the Farsi version shall prevail as the authoritative text.

Article 3 General Obligations

- 1- Nothing in this law shall be interpreted as preventing the Government of I.R. Iran from taking, individually or jointly with other States, more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, consistent with international law.
- 2- The Government of I.R. Iran shall encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.
- 3- The Government of I.R.Iran taking action pursuant to this law shall endeavor not to impair or damage their environment, human health, property or resources, or those of other States.
- 4- The Government of I.R.Iran should ensure that Ballast Water Management practices used to comply with this law do not cause greater harm than they prevent to the environment, human health, property or resources, or those of other States.
- 5- The Government of I.R.Iran shall encourage ships entitled to fly Iranian flag, and to which this Law applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate executive regulations implementing recommendations developed by the Organization.
- 6- The Government of I.R.Iran shall endeavor to co-operate with other Governments under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

Article 4 Application

- 1- Except as expressly provided otherwise in this law, this law shall apply to:
 - a. ships entitled to fly the flag of I.R.Iran;
 - b. ships not entitled to fly the flag of I.R.Iran but which operate under the authority of I.R.Iran;

- c. any other ship in an Iranian port or offshore terminal. With respect to ships of non-Parties to the Convention, the PMO shall ensure that no more favourable treatment is given to such ships
- 2- This Law shall not apply to:
- a. ships not designed or constructed to carry Ballast Water;
 - b. ships flying Iranian flag which only operate in waters under the jurisdiction of I.R.Iran, except ships operating between Oman sea and the Persian Gulf.
 - c. ships flying a flag other than Iranian flag which only operate in waters under the jurisdiction of I.R.Iran, subject to the authorization of the PMO for such exclusion. The PMO shall not grant such authorization if doing so would impair or damage the environment, human health, property or resources, or those of adjacent or other States. The Government of I.R.Iran when not granting such authorization shall notify the Administration of the ship concerned that the Convention applies to such ship;
 - d. ships which only operate in waters under the jurisdiction of I.R.Iran and on the high seas, except for ships not granted authorization pursuant to sub-paragraph (c), unless the PMO determines that the discharge of Ballast Water from such ships would impair or damage the environment, human health, property or resources, or those of adjacent of other States;
 - e. Any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on non-commercial government service. However, I.R.Iran Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this law; and
 - f. Permanent Ballast Water in sealed tanks on ships that is not subject to discharge.

Article 5 Control of the Transfer of Harmful Aquatic Organisms and Pathogens Through Ships' Ballast Water and Sediments

- 1- The Government of I.R.Iran shall require that ships to which this Law applies and which are entitled to fly Iranian flag or operating under Government of I.R.Iran authority comply with the requirements set forth in the Law, including the

applicable standards and requirements in the Executive regulations adopted to implement the Annex, and shall take effective measures to ensure that those ships comply with those requirements.

- 2- The Government of I.R.Iran shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of the Law. PMO shall prepare and propose such national policies, strategies or programmes to Ministerial Board, through the Ministry of Road and Urban Development. PMO, when preparing such policies, strategies or programmes shall consult with DOE and Ministry of Industry, Mines and Trade and should take notes of their remarks. DOE and Ministry of Industry, Mines and Trade shall give their remarks within two months from the receipt of such draft.
- 3- The Government of I.R.Iran shall ensure that such policies, strategies or programmes are approved and in forced within six months of the approval of this law.

Article 6 Sediment Reception Facilities

- 1- The Government of I.R.Iran shall ensure that, in ports and terminals where cleaning or repair of ballast tanks occurs, adequate facilities are provided for the reception of Sediments, taking into account the Guidelines developed by the Organization. Such reception facilities shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments that does not impair or damage their environment, human health, property or resources or those of other States.
- 2- PMO, taking into account the Guidelines developed by the Organization, shall prepare and propose the draft of executive regulation for reception facilities to the Ministerial Board. PMO, when preparing such executive regulations shall consult with DOE and should take notes of DOE's remarks. DOE shall give its remarks for the draft within two months from the receipt of such draft.
- 3- PMO shall notify the Organization for transmission to the other Parties concerned of all cases where the facilities provided under paragraph 1 are alleged to be inadequate.

- 4- PMO, shall designate and certify such reception facilities in accordance with executive regulations approved by the Ministerial Board.
- 5- Government of I.R.Iran shall ensure that such executive regulation is approved within six months of approval of this law. Until and unless such executive regulation is approved and in forced, Guidelines developed by the Organization shall be considered as regulations and shall be implemented by PMO.

Article 7 Scientific and Technical Research and Monitoring

- 1- Government of I.R. Iran shall endeavour, individually or jointly with other States, to:
 - a. promote and facilitate scientific and technical research on Ballast Water Management; and
 - b. monitor the effects of Ballast Water Management in waters under I.R.Iran jurisdiction.

Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships' Ballast Water.

- 2- Government of I.R.Iran shall, to further promote the objectives of this Law, promote the availability of relevant information to other Parties who request it on:
 - a. scientific and technology programmes and technical measures undertaken with respect to Ballast Water Management; and
 - b. the effectiveness of Ballast Water Management deduced from any monitoring and assessment.
- 3- PMO in co-operation with the Ministry of Science and Research, to further promote the objectives of this Law, shall request such information as mentioned in paragraph 2 of this Article from other State parties.
- 4- PMO shall establish a "National BWM Fund". "... percent of ports' tariff, according to approved annual manual of ports' tariff, shall be directly deposited in the Fund.

- 5- PMO in consultation with the Ministry of Science and Research and DOE, shall support and sponsor the scientific and technical research and monitoring in Iranian universities, knowledge based companies and research centers, to further promote the goals of the convention. PMO shall prepare and propose the draft of executive regulation for BWM funding policies to the Ministerial Board. PMO, when preparing such executive regulation shall consult with Ministry of Science and Research and DOE, and should take notes of remarks of Ministry of Science and Research and DOE. Ministry of Science and Research and DOE shall give their remarks for the draft within two months from the receipt of such draft.

Article 8 Survey and certification

- 1- PMO shall ensure that ships flying Iranian flag or operating under its authority and subject to survey and certification are so surveyed and certified in accordance with the executive regulations implementing the Annex.
- 2- PMO, in implementing measures pursuant to Article 3.1 and Section C of the Annex or relevant executive regulation, shall not require additional survey and certification of a ship of another Party.

Article 9 Violations

- 1- Any violation of the requirements of this Law by ships flying Iranian flag or under its authority constitutes an offence subject to sanctions under this law, executive regulations or other laws if specifically mentioned, wherever the violation occurs. If PMO is informed of such a violation, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If PMO is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The PMO, in co-operation with Ministry of Foreign Affairs, shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If PMO has not taken any action within one year after receiving the information, it shall so inform the Party which reported the alleged violation and report the reasons for such a delay to the Ministerial Board.

- 2- In case of violation of ships flying the flag of other State Parties, PMO shall through Ministry of Foreign Affairs or between maritime administrations, inform the flag State of such violation, and shall follow the matter in co-operation with the flag State. If the flag State has not taken any action within one year after receiving the information, PMO shall in co-operation with Ministry of foreign affairs, take investigative action. If PMO is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law.
- 3- Whenever a violation occurs, PMO shall either:
 - a. cause proceedings to be taken in accordance with this law; or
 - b. furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.
- 4- In cases where alleged violations occurred by the negligence or mistake in maintaining Ballast Water Record Book, in reporting, in monitoring the BWM system, or negligence or mistake in place of discharge or uptake of the Ballast Water, PMO shall bring the case to the court. The violations under this paragraph are subject to a monetary sanction between ---- SDR and --- SDR. IMF exchange rate, of the date of depositing the sanction, shall be referenced.
- 5- To avoid ship's arrest or undue delay, PMO or the Court shall accept a bank guarantee or a P&I Club Letter of Undertaking, equivalent to 120 per cent of the amount of penalty decided by the PMO. The Ministerial Board in accordance with this paragraph shall within 3 months from approval of this law, approve the relevant executive regulation on the criteria and the list of acceptable P&I Clubs to provide such Letter of Undertakings. PMO is responsible to prepare the draft and propose it through Ministry of Road and Urban Development.
- 6- In cases where the alleged violation committed with the intent to cause damage to the environment, human health, property or resources or those of other States or recklessly and with the knowledge that such damage would probably result, PMO shall bring the case to the court. The violations under this paragraph are subject to a monetary penalty between --- SDR and --- SDR and/or Imprisonment between --- to --- months opposable to the wrongdoer. IMF exchange rate, of the date of

depositing the penalty, shall be referenced. The Ministerial Board shall within 3 months of the approval of this law, approve the relevant executive regulation on the criteria for determining the amount of penalties within the range provided in this paragraph and the paragraph 4. PMO is responsible to prepare the draft and propose it through Ministry of Road and Urban Development.

- 7- The court in accordance with the executive regulations approved by the Ministerial Board under paragraph 4 and 6, determines the amount of the sanctions or penalties.
- 8- Any negligence from PSC officers or official personnel of PMO of the province, in the detection of the violations, or in the reporting to appropriate authorities is subject to administrative penalties according to the Law of the Management of State Services adopted 30 September 2017.
- 9- Ships flying Iranian flag or operating under its authority may deposit the penalties in Rial or USD according to IMF Exchange rate.
Other ships shall deposit the penalties in USD according to IMF exchange rate.
Other ships may also deposit the penalties in Rial; for exchanging USD to Rial, applicable PMO exchange rate shall apply.
- 10- PMO shall designate a bank account for the sanctions and penalties, and all sanctions and penalties shall be directly deposited to this account. This account shall be the same as introduced in article 7.

Article 10- Inspection of Ships

- 1- A ship to which this Convention applies may, in any port or offshore terminal of I.R.Iran, be subject to inspection by PSC officers duly authorized by PMO for the purpose of determining whether the ship is in compliance with this Law. Except as provided in paragraph 2 of this Article, any such inspection is limited to:
 - a. verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and
 - b. inspection of the Ballast Water record book, and/or
 - c. a sampling of the ship's Ballast Water carried out in accordance with the executive regulations incorporating guidelines developed by the Organization.

However, the time required to analyze the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

- 2- Where a ship does not carry a valid Certificate or there are clear grounds for believing that:
 - a. the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or
 - b. the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;a detailed inspection may be carried out.
- 3- In the circumstances given in paragraph 2 of this Article, PMO shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Article 11 Detection of Violations and Control of Ships

- 1- The Government of I.R.Iran shall co-operate with other States in the detection of violations and the enforcement of the provisions of this Convention. Special consideration shall be given to co-operation through ROPME. PMO with co-operation with DOE and Ministry of Foreign Affairs should endeavor to make and maintain effective communication line both in managerial and operational level with their counterparts in the region.
- 2- If a ship flying the Iranian flag is detected to have violated this Law or a ship operating in Iranian ports or terminals under Iranian authority, PMO, may, in addition to any sanctions or penalties described in Article 9 or any action described in Article 10, take steps to warn, detain, or exclude the ship. The PMO for the ship operating in Iranian ports or terminals under Iranian authority, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

- 3- If the sampling described in Article 10.1(c) leads to a result or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the PMO shall prohibit such ship from discharging Ballast Water until the threat is removed.
- 4- PMO's PSC/FSC officers may also inspect a ship when it enters the ports or offshore terminals under Iranian jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Law. PMO with the co-operation of foreign affairs shall send the report of such investigation to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

Article 12 Notification of Control Actions

- 1- If an inspection conducted pursuant to Articles 10 or 11 indicates a violation of this Law, the ship shall be notified. A report shall be forwarded to the Administration, including any evidence of the violation.
- 2- In the event that any action is taken pursuant to Article 10.3, 11.2 or 11.3, the PSC officer carrying out such action, after approval from the Maritime Affairs Deputy General of PMO, shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the Recognized Organization responsible for the issue of certificates shall be notified.
- 3- PMO shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in Article 10.3, 11.2 or 11.3 or if the ship has been allowed to proceed to the next port of call.

Article 13 Undue Delay to Ships

- 1- All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 9.1, 10, 11 or 12.
- 2- When a ship is unduly detained or delayed under Article 9.1, 10, 11 or 12, it shall be entitled to compensation for any loss or damage suffered. The owner/owners

have the right to start a legal proceeding in the court within the same provincial jurisdiction. The court, to decide on the case, shall take into account the circumstances of the case, and decide in accordance with the executive regulations approved by the Ministerial Board and guidelines of the Organization.

Article 14 Technical Assistance, Co-operation and Regional Co-operation

- 1- Government of I.R.Iran should, directly or through the Organization and other international bodies such as ROPME, or with State parties to Tehran Convention, in respect of the control and management of ships' Ballast Water and Sediments, to provide support for those parties which request technical assistance:
 - a. to train personnel;
 - b. to ensure the availability of relevant technology, equipment and facilities;
 - c. to initiate joint research and development programmes; and
 - d. to undertake other action aimed at the effective implementation of the Convention and of guidance developed by the Organisation related thereto.
- 2- Government of I.R.Iran should actively co-operate with other state parties, subject to Iranian national laws, regulations and policies, in the transfer of technology in respect of the control and management of ships' Ballast Water and Sediments.
- 3- In order to further promote the objectives of this Law, Government of I.R.Iran with common interests, to protect the environment, human health, property and resources in a given geographical area, in particular, with special reference to State parties to the Kuwait treaty and Tehran Convention, shall endeavor to enhance regional co-operation, including through the conclusion of regional agreements consistent with the Convention. Government of I.R.Iran should seek to co-operate with the Parties to regional agreements to develop harmonized procedures.

Article 15 Communication of information

PMO shall report to the Organization and, where appropriate, make available to other parties the following information:

- a. any requirements and procedures relating to Ballast Water Management, including its laws, regulations, and guidelines for implementation of the Convention;
- b. the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments; and
- c. any requirements for information from a ship which is unable to comply with the provisions of the Convention for reasons specified in regulations A-3 and B-4 of the Annex.

IN THE NAME OF GOD

Based on the proposal No. ----- on -----from Ministry of Road and Urban Development (Ports and Marine Organization), this executive regulation is being adopted by the Ministerial Board on ----- and approved by the President on -----, to discharge the responsibilities endowed under Article 2.7 of the Law to Implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 as amended, into the Laws of the Islamic Republic of Iran and to provide for the effective implementation thereof by the Parliament and to fully implement the Convention.

Executive regulation No.----- to Implement Article 2.7 of the Law to Implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 as Amended

SECTION A - GENERAL PROVISIONS

Regulation A-1 Definitions

For the purposes of this Executive Regulation:

- 1- "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of I.R.Iran, the Administration is the Government of I.R.Iran. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the I.R.Iran exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the I.R.Iran. In line with provision 1 of the "The

Law of Accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran”, the Ministry of Road and Urban Development (Ports and Maritime Organization), unless decided otherwise by the Government, is responsible for the implementation of the Convention.

- 2- “Anniversary date” means the day and the month of each year corresponding to the date of expiry of the Certificate.
- 3- “Ballast Water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.
- 4- “Ballast Water Capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.
- 5- “Ballast Water Management” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.
- 6- “Certificate” means the International Ballast Water Management Certificate.
- 7- “Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.¹³²
- 8- “Committee” means the Marine Environment Protection Committee of the Organization.
- 9- “Convention” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, as amended.

¹³² Refer to the ISM Code adopted by the Organization by resolution A.741(18), as amended.

- 10- “DOE” means Department of Environment of I.R.Iran.
- 11- “FSC” means Flag State Control officers who are authorized by PMO to conduct port State inspection on ships flying Iranian flag or under its authority.
- 12- “Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.
- 13- “Harmful Aquatic Organisms and Pathogens” means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.
- 14- “Organization” means the International Maritime Organization.
- 15- “PMO” means Ports and Maritime Organization of I.R.Iran.
- 16- “PSC” means Port State Control officers who are authorized by PMO to conduct port State Inspection on foreign ships which voluntarily entered Iranian ports or its offshore installations.
- 17- “ROPME” means the Regional Organization for the Protection of the Marine Environment, which established under the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.
- 18- “Secretary-General” means the Secretary-General of the Organization.
- 19- “Sediments” means matter settled out of Ballast Water within a ship.
- 20- “Ship” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.
- 21- “1399 Law” means The Law to Implement the International Convention for the Control and Management of Ships’ s Ballast Water and Sediments, 2004 as Amended adopted on ... 1399.

Regulation A-2 General Applicability

Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management in accordance with the provisions of this executive regulation.

Regulation A-3 Exceptions

The requirements of regulation B-3, or any measures adopted pursuant to Article 3.1 and Section C, shall not apply to:

- 1- the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or
- 2- the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:
 - a. provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
 - b. unless the owner, Company or officer in charge willfully or recklessly caused damage; or
- 3- the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or
- 4- the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or
- 5- the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided. that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this executive regulation.

Regulation A-4 Exemptions

- 1- PMO, in waters under Iranian jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in The Law to Implement the International Convention for the Control and Management of Ships' s Ballast Water and Sediments, 2004 as Amended , but only when they are:
 - a. granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;
 - b. effective for a period of no more than five years subject to intermediate review;
 - c. granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and
 - d. granted based on the Guidelines on risk assessment developed by the Organization .
- 2- Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.
- 3- Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that PMO determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.
- 4- Any exemptions granted under this regulation shall be recorded in the Ballast Water record book.
- 5- PMO, in normal circumstances, shall not grant such exemption for ships operating between the Persian Gulf and Oman Sea.

Regulation A-5 Equivalent compliance

Equivalent compliance with this Executive Regulation for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the PMO taking into account Guidelines developed by the Organization.

SECTION B - MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS

Regulation B-1 Ballast Water Management Plan

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

- 1- detail safety procedures for the ship and the crew associated with Ballast Water Management as required by the the 1399 Law and this Executive Regulation ;
- 2- provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Executive Regulation;
- 3- detail the procedures for the disposal of Sediments:
 - a. at sea; and
 - b. to shore;
- 4- include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;
- 5- designate the officer on board in charge of ensuring that the plan is properly implemented;

- 6- contain the reporting requirements for ships provided for under the 1399 Law and this Executive Regulation; and
- 7- be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

Regulation B-2 Ballast Water Record Book

- 1- Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II.
- 2- Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.
- 3- In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by The Law to Implement the International Convention for the Control and Management of Ships' s Ballast Water and Sediments, 2004 as Amended or this Executive Regulation , an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.
- 4- The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.
- 5- Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

- 6- Officers duly authorized by PMO may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation B-3 Ballast Water Management for Ships

- 1- A ship constructed before 2009:
 - a. with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;
 - b. with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.
- 2- A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.
- 3- A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.
- 4- A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.

- 5- A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.
- 6- The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.
- 7- Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.

Regulation B-4 Ballast Water Exchange

- 1- A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:
 - a. whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization and ROPME;
 - b. in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1(a), such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1(a) and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.
- 2- In the Persian Gulf where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1(a) or 1(b), PMO shall designate areas, in consultation with DOE and adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1(a).
- 3- A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of paragraph 1.

- 4- A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.
- 5- When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

Regulation B-5 Sediment Management for Ships

- 1- All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.
- 2- Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

Regulation B-6 Duties of Officers and Crew

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

SECTION C - SPECIAL REQUIREMENTS IN CERTAIN AREAS

Regulation C-1 Additional Measures

- 1- If PMO in consultation with DOE, individually or jointly with maritime Administration or related authorities of State Parties of Kuwait treaty or the Tehran Convention, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, PMO may, consistent with international law, require ships to meet a specified standard or requirement.
- 2- Prior to establishing standards or requirements under paragraph 1, PMO in co-operation with Ministry of Foreign Affairs, should consult with adjacent or other States that may be affected by such standards or requirements.
- 3- If the PMO individually or jointly with maritime Administration or related authorities of other State parties intends to introduce additional measures in accordance with paragraph 1 shall:
 - a. take into account the Guidelines developed by the Organization.
 - b. communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). Such communication shall include:
 - c. the precise co-ordinates where additional measure(s) is/are applicable;
 - d. the need and reasoning for the application of the additional measure(s), including, whenever possible, benefits;
 - e. a description of the additional measure(s); and
 - f. any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).

- g. to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea 1982, as appropriate, obtain the approval of the Organization.
- 4- PMO, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ships.
- 5- Any additional measures adopted by PMO shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.
- 6- PMO introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

Regulation C-2 Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures

- 1- PMO shall endeavour to notify mariners of areas under Iranian jurisdiction where ships should not uptake Ballast Water due to known conditions. PMO shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:
 - a. known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;
 - b. near sewage outfalls; or
 - c. where tidal flushing is poor or times during which a tidal stream is known to be more turbid.
- 2- In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, PMO shall notify the Organization and any potentially affected coastal

States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. PMO shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

SECTION D - STANDARDS FOR BALLAST WATER MANAGEMENT

Regulation D-1 Ballast Water Exchange Standard

- 1- Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 per cent volumetric exchange of Ballast Water.
- 2- For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Regulation D-2 Ballast Water Performance Standard

- 1- Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.
- 2- Indicator microbes, as a human health standard, shall include:

- a. Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (CFU) per 100 millilitres or less than 1 CFU per 1 gram (wet weight) zooplankton samples;
- b. *Escherichia coli* less than 250 CFU per 100 millilitres;
- c. Intestinal Enterococci less than 100 CFU per 100 milliliters.

Regulation D-3 Approval requirements for Ballast Water Management systems

- 1- Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Executive Regulation must be approved by the PMO taking into account Guidelines developed by the Organization, or by other State parties' administrations.
- 2- Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Executive Regulation shall be approved by the Organization, based on a procedure developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.
- 3- Ballast Water Management systems used to comply with this Executive Regulation must be safe in terms of the ship, its equipment and the crew.

Regulation D-4 Prototype Ballast Water Treatment Technologies

- 1- For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the PMO or State parties' administrations to test and evaluate promising Ballast Water treatment technologies, the standard in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.

- 2- For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the PMO or State parties administrations, taking into account Guidelines developed by the The organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.
- 3- In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, PMO shall:
 - a. take into account Guidelines developed by the Organization, and
 - b. allow participation only by the minimum number of ships necessary to effectively test such technologies.
- 4- Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

Regulation D-5 Review of Standards by the Organization

- 1- PMO shall actively participate in all studies and reviews conducted in the committee, with special focus on the needs of I.R.Iran's National Interest. The PMO shall also contribute in periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1. as well as any other aspect of Ballast Water Management addressed in this executive regulation, including any Guidelines developed by the Organization.
- 2- Such reviews of appropriate technologies shall also take into account:
 - a. safety considerations relating to the ship and the crew;
 - b. environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;
 - c. practicability, i.e., compatibility with ship design and operations;

- d. cost effectiveness, i.e., economics; and
- e. biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.

SECTION E - SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Regulation E-1 Surveys

- 1- Ships of 400 gross tonnage and above to which this Executive Regulation applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:
 - a. An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Executive Regulation.
 - b. A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of the 1399 Law and this Executive Regulation.
 - c. An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Executive Regulation and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

- d. An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
 - e. An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with the 1399 Law and this Executive Regulation. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of the 1399 Law and this Executive Regulation. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
- 2- The PMO shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of the 1399 Law and this Executive Regulation are complied with.
 - 3- Surveys of ships for the purpose of enforcement of the provisions of the 1399 Law and this Executive Regulation shall be carried out by officers of PMO. PMO may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.
 - 4- If PMO nominates surveyors or recognizes organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations¹³³ to:
 - a. require a ship that they survey to comply with the provisions of the 1399 Law and this Executive Regulation; and

¹³³ Refer to the guidelines adopted by the Organization by resolution A.739(18), as may be amended by the Organization, and the specifications adopted by the Organization by resolution A.789(19), as may be amended by the Organization.

- b. carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party to the Convention.
- 5- PMO shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.
 - 6- When PMO, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party of the Convention, the appropriate authorities of the port State shall be notified immediately. When an officer of PMO, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, they shall request from the Government of the port State concerned to give such officer, surveyor or organization any necessary assistance to carry out their obligations under this Executive Regulation, including any action described in Article 10 of the 1399 Law.
 - 7- Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with the 1399 Law and this Executive Regulation, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 is necessary. If the ship is in a port of another Party of the Convention, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

- 8- In every case, PMO shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.
- 9- The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of the 1399 Law and this Executive Regulation to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.
- 10- After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation E-2 Issuance or Endorsement of a Certificate

- 1- PMO shall ensure that a ship to which regulation E-1 applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-1. A Certificate issued under the authority of a Party to the Convention shall be accepted by the PMO and other authorities and regarded for all purposes covered by this executive regulation as having the same validity as a Certificate issued by PMO.
- 2- Certificates shall be issued or endorsed either by the PMO or by any person or organization duly authorized by it. In every case, PMO assumes full responsibility for the Certificate.

Regulation E-3 Issuance or Endorsement of a Certificate by Another Party

- 1- At the request of the Administration other State parties to the Convention, PMO may cause a ship to be surveyed and, if satisfied that the provisions of the Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Executive Regulation.

- 2- A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.
- 3- A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration. Such Certificates issued by other State parties shall have the same force and receive the same recognition as a Certificate issued by the PMO.
- 4- No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party to the convention.

Regulation E-4 Form of the Certificate

The Certificate shall be drawn up in Farsi, in the form set forth in Appendix I. The text shall include a translation into English, French or Spanish.

Regulation E-5 Duration and Validity of the Certificate

- 1- A Certificate shall be issued for a period specified by PMO that shall not exceed five years.
- 2- For renewal surveys:
 - a. Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.
 - b. When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.
 - c. When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from

the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

- 3- If a Certificate is issued for a period of less than five years, PMO may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is issued for a period of five years are carried out as appropriate.
- 4- If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the PMO may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.
- 5- If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, PMO may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
- 6- A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by PMO for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
- 7- In special circumstances, as determined by PMO, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by paragraph

2.2, 5 or 6 of this Executive Regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

- 8- If an annual survey is completed before the period specified in regulation E-1, then:
 - a. the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
 - b. the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;
 - c. the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

- 9- A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:
 - a. if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with the 1399 Law and this Executive Regulation is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Executive Regulation;
 - b. upon transfer of the ship to the Iranian flag. A new Certificate shall only be issued when the PMO is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer of an Iranian Ship to other flags, if requested within three months after the transfer has taken place, the PMO shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;
 - c. if the relevant surveys are not completed within the periods specified under regulation E-1.1; or

d. if the Certificate is not endorsed in accordance with regulation E-1.1.

APPEDIX I

INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") under the authority of the Government of Islamic Republic of Iran

by

(full designation of the competent person or organization authorized under the provisions of the Convention)

Particulars of ship¹³⁴:

Name of ship	
Distinctive number or letters	
Port of registry	
Gross Tonnage	
IMO number ¹³⁵	
Date of Construction	
Ballast Water Capacity (in cubic metresmetres)	

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used	
Date installed (if applicable)	
Name of manufacturer (if applicable)	

¹³⁴ Alternatively, the particulars of the ship may be placed horizontally in boxes.

¹³⁵ IMO Ship Identification Number Scheme adopted by the Organization by resolution A.600(15).

The principal Ballast Water Management method(s) employed on this ship is/are:

in accordance with regulation D1

in accordance with regulation D2
(describe)

the ship is subject to regulation D4

THIS IS TO CERTIFY:

- 1- That the ship has been surveyed in accordance with regulation E1 of the Annex to the Convention
- 2- That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid untilsubject to surveys in accordance with regulation E1 of the Annex to the Convention.

Completion date of the survey on which this certificate is based: dd/mm/yyyy

Issued at.....

(Place of issue of certificate)

.....

(Date of issue) Signature of authorized official issuing the certificate)

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that a survey required by regulation E1 of the Annex to the Convention

the ship was found to comply with the relevant provisions of the Convention:

Annual survey:

Signed
(Signature of duly authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*:

Signed
(Signature of duly authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*:

Signed
(Signature of duly authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

Annual survey:

Signed
(Signature of duly authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

* Delete as appropriate.

ANNUAL/INTERMEDIATE SURVEY IN ACCORDANCE WITH REGULATION E5.8.3

THIS IS TO CERTIFY that, at an annual/intermediate* survey in accordance with regulation E5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention:

Signed
(Signature of authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID FOR LESS THAN 5 YEARS WHERE REGULATION E5.3 APPLIES

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E5.3 of the Annex to the Convention, be accepted as valid until.....

Signed
(Signature of authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN COMPLETED AND REGULATION E5.4 APPLIES

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E5.4 of the Annex to the Convention, be accepted as valid until

Signed
(Signature of authorized official)
Place
Date.....
(Seal or stamp of the authority, as appropriate)

* Delete as appropriate

ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE REGULATION E5.5 OR E5.6 APPLIES

This Certificate shall, in accordance with regulation E5.5 or E5.6* of the Annex to the Convention, be accepted as valid until

Signed
(Signature of authorized official)
Place
Date.....

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE REGULATION E5.8 APPLIES

In accordance with regulation E5.8 of the Annex to the Convention the new Anniversary date is.....

Signed
(Signature of authorized official)
Place
Date.....

(Seal or stamp of the authority, as appropriate)

In accordance with regulation E5.8 of the Annex to the Convention the new Anniversary date is.....

Signed
(Signature of duly authorized official)
Place
Date.....

(Seal or stamp of the authority, as appropriate)

* Delete as appropriate

APPENDIX II

Form of Ballast Water Record Book International Convention for the Control and Management of Ships' Ballast Water and Sediments

Period From:To:

Name of Ship

IMO number

Gross tonnage

Flag

Total Ballast Water capacity (in cubic metresmetres)

The ship is provided with a Ballast Water Management plan¹³⁶

Diagram of ship indicating ballast tanks:

1 Introduction

In accordance with regulation B2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

2 Ballast Water and Ballast Water Management

“Ballast Water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines 3 developed by the Organization.

3 Entries in the Ballast Water Record Book

Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1 When Ballast Water is taken on board:

- a. Date, time and location port or facility of uptake (port or lat/long), depth if outside port
- b. Estimated volume of uptake in cubic metresmetres
- c. Signature of the officer in charge of the operation.

3.2 Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:

¹³⁶ Refer to the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens adopted by the Organization by resolution A.868(20).

- a. Date and time of operation
 - b. Estimated volume circulated or treated (in cubic metresmetres)
 - c. Whether conducted in accordance with the Ballast Water Management plan
 - d. Signature of the officer in charge of the operation
- 3.3 When Ballast Water is discharged into the sea:
- a. Date, time and location port or facility of discharge (port or lat/long)
 - b. Estimated volume discharged in cubic metresmetres plus remaining volume in cubic metresmetres
 - c. Whether approved Ballast Water Management plan had been implemented prior to discharge
 - d. Signature of the officer in charge of the operation.
- 3.4 When Ballast Water is discharged to a reception facility:
- a. Date, time, and location of uptake
 - b. Date, time, and location of discharge
 - c. Port or facility
 - d. Estimated volume discharged or taken up, in cubic metresmetres
 - e. Whether approved Ballast Water Management plan had been implemented prior to discharge Signature of officer in charge of the operation
- 3.5 Accidental or other exceptional uptake or discharges of Ballast Water:
- a. Date and time of occurrence
 - b. Port or position of the ship at time of occurrence
 - c. Estimated volume of Ballast Water discharged
 - d. Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks.
 - e. Whether approved Ballast Water Management plan had been implemented prior to discharge
 - f. Signature of officer in charge of the operation
- 3.6 Additional operational procedure and general remarks

4 Volume of Ballast Water

The volume of Ballast Water onboard should be estimated in cubic metresmetres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship:

Distinctive number or letters

Date	Item (number)	Record of operations/signature of officers in charge
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Signature of master

ANNEX 1

The Law of Accession to the International Convention for the Control and Management of Ships Ballast Water and Sediments by the Islamic Republic of Iran¹³⁷

The Single-Article- Hereby, the Government of the Islamic Republic of Iran, is permitted to accede to the International Convention for the Control and Management of Ships Ballast Water and Sediments (attached herein) and deposit the document of accession to the depository.

1st Provision- Ministry of Road and Urban Development (Ports and Maritime Organization) is responsible for the implementation of the convention, and the government may change it.

2nd Provision- The Islamic Republic of Iran does not consider itself obliged under article 15 of the convention regarding the dispute settlement relating to interpretation or application of the convention through conciliation and arbitration. Dispute settlement by conciliation and arbitration is possible only with the consent of all parties of the dispute and with compliance with related laws and regulations.

The abovementioned shall be noted to the depository at the time of depositing the document of accession.

3rd Provision- According to the principle (77) of the Islamic Republic of Iran Constitution, the government is obliged to send all amendments under article (19) of the convention to the parliament, reasonably within the deadline and before expiring of prearranged deadlines in the mentioned article.

If the parliament does not approve the amendments, the government shall notify the objection within the deadline to the depository. Such amendments will not be enforced for the government of the Islamic Republic of Iran.

¹³⁷ This law was approved in the parliament in 2010, allowing the Government to accede to the BWM Convention. The law has the translated version of BWM Convention as the annex.